THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

ADVISORY BOARD ON

RADIATION AND WORKER HEALTH

The verbatim transcript of the Meeting of the Advisory Board on Radiation and Worker Health held via Teleconference on Friday, March 28, 2003.

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(By Group, in Alphabetical Order)

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(Continued)

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BETTY JEAN SHINAS, Survivor
KEN SILVER, Los Alamos POW
BILL TANKERSLEY, Oak Ridge Associated Universities
GLORIA TRUJILLO, Survivor

P R O C E E D I N G S

2:07 p.m.

[Preceding the call to order, a roll call of the Board was taken. All Board members were present.]

DR. ZIEMER: Let me officially call the meeting to order. This is the official conference call of the Advisory Board on Radiation and Worker Health.

The agenda has been distributed. It is also on the Web site. There are two things on the agenda. One is a public comment period for which we have allowed thirty minutes, and that thirty minutes will start when we start the actual comment period. And then the rest of the time is devoted to Board discussion. If there's time at the end of the Board discussion before the 5:00 o'clock hour, we can -- that's 5:00 o'clock Eastern Standard Time -- we can take additional public comments.

I'd like to -- we had a roll call. All the Board members are present on the line, including the Executive Secretary, Larry Elliott.

We'd like to determine who's here from the general public, and how many wish to make public

comments so that we can allot the time. So let me just ask members of the public to identify yourself by name and either location or affiliation, and then indicate whether you wish to make public comment.

So anybody can start.

MR. FOLEY: Philip Foley from Paducah, Kentucky, with the Worker Health Protection Program.

DR. ZIEMER: And spell your name. Your last name is --

MR. FOLEY: F-O-L-E-Y.

DR. ZIEMER: Okay, from Paducah.

Anyone else?

MS. BARRIE: Terrie Barrie from Colorado, advocate. And I'm not sure if I'll be --

DR. ZIEMER: Do you need to have the name spelled?

MS. ROBINSON: Yes, please.

MS. BARRIE: B as in boy, A-R-R-I-E is the last name, Terrie, T-E-R-R-I-E.

DR. ZIEMER: Okay, others?

MS. GONZALES: Yes, can you hear me?

DR. ZIEMER: Barely.

MS. GONZALES: Can you hear me, gentlemen?

DR. ZIEMER: Yes, speak loudly.

MS. ROBINSON: I can't.

MS. GONZALES: My name is Carmen Gonzales.

MS. NEWSOM: I'm sorry, I can't hear that.

MS. ROBINSON: This is Teresa from Cambridge. I can't hear that.

MS. GONZALES: Okay. My name is Carmen Gonzales. I'm on a speaker phone. Can you hear me?

MS. ROBINSON: No.

MS. GONZALES: You can't hear me?

MS. ROBINSON: Now I can.

DR. ZIEMER: Barely.

MS. GONZALES: Hold on.

Okay, my name is Carmen Gonzales. Can you hear me now?

MS. ROBINSON: Yes.

DR. ZIEMER: Yes.

MS. GONZALES: Okay. I was on speaker phone. And I'm a survivor, and I'd like to comment on the special cohort.

DR. ZIEMER: Okay, we'll come back to you, then.

Others?

MS. GONZALES: I'm sorry?

DR. ZIEMER: We will come back to you after we have the roll call here.

Others?

MS. DREY: Kay Drey in St. Louis, and I do not want to make a comment.

DR. ZIEMER: Spell the last name again.

MS. DREY: D as in David, R-E-Y. I will not want to make a comment.

DR. ZIEMER: You do wish to make a comment?

MS. DREY: No, I will not want to make a comment.

DR. ZIEMER: No, okay.

Others?

MS. LEWIS: This is Mark Lewis from PACE 5689 from Portsmouth, Ohio. I don't really have a comment planned, but who knows.

DR. ZIEMER: Okay, others?

MR. BARRIE: George Barrie, B-A-R-R-I-E. Sick worker from Rocky Flats, Colorado.

DR. ZIEMER: Okay, others?

MR. SCHOFIELD: Philip Schofield from Espanola, New Mexico. I'm with a project on worker safety.

DR. ZIEMER: Okay.

MR. SILVER: Ken Silver, Los Alamos POW.

Yes, I will have a comment.

DR. ZIEMER: Comment from -- okay, we'll mark you down.

Others?

MS. KIEDING: Sylvia Kieding from PACE, and I don't know if I will.

DR. ZIEMER: Okay.

MR. RAY: (Inaudible) Ray, R-A-Y, from (inaudible), Ohio.

MS. RAMADEI: I'm Cathy Ramadei from the CDC Committee Management Office.

DR. ZIEMER: Okay.

MS. ROSS: I'm Rene Ross from the CDC Committee Management Office.

DR. ZIEMER: Others?

MR. MILLER: Richard Miller from Government Accountability Project.

DR. ZIEMER: Okay. Any comments?

MR. MILLER: Yes, indeed.

DR. ZIEMER: Comment, okay.

Others?

MS. BROCK: Denise Brock from St. Louis, Missouri.

DR. ZIEMER: Denise, okay.

MR. FIELD: Bill Field from the College of

Public Health at the University of Iowa.

DR. ZIEMER: Okay.

Others?

MS. BROCK: This is Denise Brock again, and I did want to make a comment as well.

DR. ZIEMER: Okay, I'll mark you down, Denise. Thank you.

Others?

MR. BARNES: James Barnes, Rocketdyne/Boeing, Los Angeles.

DR. ZIEMER: Thank you.

Keep going.

UNIDENTIFIED: (inaudible)

DR. ZIEMER: I”m hearing a conversation. Is somebody speaking?

[No responses]

DR. ZIEMER: Any other members of the public on this phone call that haven't indicated?

MR. KOTSCH: Jeff Kotsch is here from the Department of Labor.

DR. ZIEMER: Okay. And I'll ask, in addition to members of the public, any federal staff or other agency staffers aboard?

MR. NAIMON: David Naimon from the Department of Health and Human Services.

DR. ZIEMER: Okay, David.

MS. HOMOKI-TITUS: Liz Homoki-Titus from Health and Human Services.

MR. SUNDIN: Dave Sundin, NIOSH.

DR. ZIEMER: Okay.

MR. KATZ: Ted Katz, NIOSH.

MS. HOMER: Cori Homer, NIOSH.

MS. ROBINSON: Teresa Robinson, Cambridge Communications.

MS. NEWSOM: Kim Newsom, Nancy Lee & Associates.

DR. ZIEMER: Okay. Any other members of the public aboard that have not identified?

MR. TANKERSLEY: This is Bill Tankersley from Oak Ridge Associated Universities.

DR. ZIEMER: Okay.

Anyone else?

[No responses]

DR. ZIEMER: Okay. Then I'm going to -- it's now just about 2:15, 2:14. I'm going to open the public comment period, and Ms. Gonzales, I have you first.

MS. GONZALES: All right. Is that Carmen Gonzales?

DR. ZIEMER: Yes. And let me just look here.

So far I see one, two, three, four, maybe five individuals who have indicated they wish to comment. So I ask you to try to limit your remarks to about five minutes.

MS. GONZALES: Sure. Okay. It will be less than that.

Good afternoon, gentlemen. My name is Carmen Gonzales, and I am the daughter of Miguel Almada (phonetic), who is deceased.

My father worked in Los Alamos for 34 years. Los Alamos National Labs is a facility that has been known to have missing, incomplete, and in our father's case inaccurate data in regards to exposure records. In light of the alarming discrepancies discovered in workers' files, it is of the utmost importance that the Los Alamos facility be included in the special cohort.

Having said that, the other concern now is that the number of cancers being considered for that cohort are now being drastically altered. This leads me to believe that the compensation act is becoming the selective compensation act. It appears that NIOSH and the Department of Labor is working overtime to make changes that are not claimant friendly, and seemingly

unconstitutional.

Is it possible that the purpose of these changes is to eliminate as many eligible claims and therefore lessen the cost to the federal government? I ask you gentlemen, is this (inaudible) viable? If your answer is yes, then it is one more blow to the affected workers and their families.

And thank you, gentlemen, for your time.

DR. ZIEMER: Okay. Thank you, Ms. Gonzales.

Then I have, I believe it's Mr. Silver, also from Los Alamos?

MR. SILVER: Yes. Thank you very much for including us in the conference calls.

I'm picking up where we left off last time, a question was in the air as to whether the rule would cover all 22 specified cancers. And one of the Board members, I think Dr. Andrade, pointed out that indeed the entire list is in Section 83.5. But there's also a clause in 83.13 that allows NIOSH the discretion the limit the list of specified cancers to as few as just one cancer.

And I think it's important to think about this in terms of our system of government, our laws. I see this in a lot in different documents

that we developed -- the Constitution, apparently contradictory language in the Interstate Commerce clause, and the States' Rights clause. And that's really where the rubber meets the road, how these apparently contradictory sections of a legal document interplay with each other.

In the Americans with Disabilities Act we have reasonable accommodation, but on the other hand we have business necessity, and the last ten or twelve years we've seen how those two competing ideas have defined the scope of people's rights under the Americans with Disabilities Act. So finally in this regulation we see the list of specified cancers -- yeah, there's 22 of them -- but we have this quite objectionable clause in 83.13 to allow NIOSH to hack down the list to as few as one cancer.

Now what I want to know is where in legislative history there is any justification for that clause in 83.13. We followed this quite closely since the summer of '99. We've read the Congressional Committee hearing. We've studied the Committee (inaudible). We followed with great interest the floor debate and the floor statements from Congressmen. And I can't find a

single iota or shred of justification in the legislative history for NIOSH to hack down the list of specified cancers to as few as one. So we'd really like to know the source document, the page, (inaudible) for the justification you find in the legislative history for that clause.

Thank you for your time and attention.

DR. ZIEMER: Okay, thank you, Mr. Silver.

Then I also have Rich Miller. Rich?

MR. MILLER: Thank you, Dr. Ziemer.

During the last Advisory Board call there was an extended discussion both about the definition of what is a facility, but separately there was a discussion about whether multiple facilities could be included, regardless of how one defines the term “facility.”

And understanding that NIOSH staff at least is taking the position that the Labor Department is the one dictating this particular definitional question of whether a single facility can be multiple facilities, I undertook a little bit of research. And what we've discovered is that where there is -- where interpreting of legislative enactment becomes an issue, the courts commonly resort to the rules of statutory

construction.

And there are many different textbooks out there for rules of statutory construction, and I had the occasion to review five separate ones in this matter in the law library and reviewing the Internet. And in every single book which deals with the rules of statutory construction, the singular includes the plural. And in fact, most drafting texts advise drafters to use the singular when possible because it is understood to include the plural.

And we also see that, as I noted in the e-mail I think I sent to you, Dr. Ziemer, and hopefully was circulated to the Board, words of one gender often include other genders, so that when one refers to “he” one doesn't mean to exclude “she.”

So I guess the question in front of us here on the question of facility versus facilities takes on a very practical effect. One of the practical effects might be where you have what we euphemistically refer to are sponges, people who go into a job, take their annual dose in a day or two or a week, and move on to the next job. And yet you could easily conceive of a Special

Exposure Cohort of individuals, not necessarily construction workers but individuals who moved from facility to facility to facility who had an annual dose, but because of inadequate recordkeeping or notification or management of the rad system would have gotten cumulative doses which may not be estimable, in which case you may want to think about a multi-facility Special Exposure Cohort.

So I guess I would just urge the Board in thinking about developing its comments for NIOSH to consider the fact that the Department of Labor's regulations allow for this very circumstance at 20 CFR 30.214, which allows, for example, accumulating days of employment at multiple gaseous diffusion plants in three states in order to meet the 250-day workday threshold for the Special Exposure Cohort.

And I'd be happy if anybody wanted to have further conversation about this, but I don't think the rules of statutory construction inform this. And anybody who thinks because only the singular was used in a bill strains, I think, even the rules of strict construction about whether you could allow for a plural to be

construed from the singular.

The second point I would make is, very briefly, is this question about limiting the list of cancers. I had an opportunity to review, and I hope the Board has as well, the comments of the Health Physics Society with respect to the question of whether you could limit the list of cancers based on biokinetic models in a Special Exposure Cohort. And I guess there's sort of two points that the Health Physics Society makes which may be somewhat at odds with the position that this Board has taken.

And the first is that the effects we're dealing with here are stochastic effects and not deterministic effects. And early on, I believe it was the very first Advisory Committee, the Board said it was not going to open up that quagmire of whether or not there is a no threshold dose for the effects of radiation. And if you're not going to open up that particular debate, I don't know where the scientific justification comes from that says that there is a cutoff point beneath which one could reasonably estimate that certain cancers should or should not be included.

The second question I guess you have to grapple with is the question that Ken Silver raised, which is I had the chance at least to go back and read the legislative history on this deal as well, and I can find nothing that authorizes NIOSH to limit the list of covered cancers. And I had the chance to go talk with the key Senate staffers who actually worked on the conference on this bill on both sides of the aisle and in both the House and the Senate, and they in no way, shape, or form could recall any such discussions. And it seemed to stretch their credibility -- or credulity a little bit to think that this is how the rule was going to be interpreted.

So I guess the question is if you're going to shorten the list of cancers because you think that this is good science, then I think the Board needs to be prepared to say it is going to jettison the no threshold hypothesis that the Board has previously said it would not question. Otherwise, I don't know at what level you determine significance for the level of a potential dose that you can't estimate to begin with in the special cohort rule.

Those are my thoughts.

DR. ZIEMER: Okay, thank you, Richard.

Then I have Denise Brock, isn't it?

MS. BROCK: Yes, hi. How are you?

DR. ZIEMER: From St. Louis.

MS. BROCK: I would probably like to continue on where Richard left off, in the same manner that I'm feeling that Congress was pretty clear with their intent when they said 22 cancers. And I'm a bit perplexed at how someone else could go in and actually alter that and make it more organ-specific. It seems to be all about etiology, not science.

And I'm really not understanding how the 22 cancers could be dropped down to organ-specific if you would say someone would be exposed to radon progeny, how can anyone say there would be a zero probability that maybe there wouldn't be daughter products that would come off of that and not just hit the lung but perhaps the pancreas, the colon. I'm not a doctor, but my concern there would be, as the lady said earlier, that it's just making something that's difficult already impossible. It's actually adding insult to injury.

And then I was looking at the DOL law, and I found under Section 738(4)(d) the purpose of this program actually, it's my understanding, would be to provide for timely, uniform and adequate compensation of covered employees, and where applicable survivors of such employees, suffering from illnesses incurred by such employees in the performance of their duties for the Department of Energy and certain contractors or subcontractors.

And when you think about timely and you're looking at some of these situations where there hasn't been a site profile done yet or you have loss of records, destruction of records, or even in the case of Mallincrodt in the St. Louis and Weldon Spring areas as well as Hematite, when you have a situation where these workers were exposed to things they were never monitored for, my concern would be how would it be possible to even dose reconstruct it? And I know it's NIOSH's feeling that that's possible. I'm not an expert, so I obviously don't know. But I'm assuming that according to maybe the majority of the Board that they feel that that would not be feasible.

Then when you looked under Part B, Program Administration, I started looking under the

definitions, and it actually has the term "specified cancer" or the term "member of the SEC." And what that means, the term "occupational illness" and what that means, and it does cover beryllium illness, cancer, specified cancer, chronic silicosis. And I guess my concern would be how could that be changed.

And again, with facility versus facilities, in our area we have workers that had went from the downtown site, a lot of those workers perhaps moved into the Weldon Spring site. Maybe they did 200 days at the downtown and maybe 50 at Weldon or 50 at Hematite. My concern here is if they're using the same process (inaudible) or doing the same job, how would that not allow them the 250 days?

And again, I'm trying to see -- I think I had this section written down, and I think I had brought this up in Cincinnati. There's a section, I believe it was 83.7, incident and occurrence. And I'm curious how specific one must be if NIOSH, if I understood correctly, was wanting two witnesses to any occurrence. Most of these workers are dead. I mean, they were told not to discuss the specifics of their jobs.

Surviving spouses may not know anything but that their spouse had been injured or possibly hospitalized. And I think we know that most of these hospital records have been destroyed after ten years, and maybe the only proof is the story that the decedent relayed to them, or maybe a list of occurrences in the atomic energy industry that would just perhaps show the plants or the area and the year, but maybe no names on who was involved. And I'm curious at what point would somebody say that they're going to take somebody at their word.

And with 91 pages, is what I read, just as a layperson I feel like I have to read that and disseminate that to all these people. Again, it just feels like it's absolutely overwhelming. And you're making something that seemed to me Congress' intent was crystal clear, and now it seems to me that the easiest way to remedy it in our situation would be to actually have it legislated (inaudible) a petition for it if it seems much too difficult.

Thank you.

DR. ZIEMER: Okay, thank you, Denise.

Those are all that -

UNIDENTIFIED: Excuse me --

UNIDENTIFIED: Excuse me --

DR. ZIEMER: Yes?

UNIDENTIFIED: There's two more speakers here that would like to speak.

DR. ZIEMER: Oh, okay. Who is it?

MS. JACQUEZ: My name is Epifania Jacquez. Shall I spell that for you?

DR. ZIEMER: Yes.

MS. JACQUEZ: E-P-I-F-A-N-I-A, Jacquez, J-A-C-Q-U-E-Z. And I'm calling -- I'm what is known as a survivor in this package (inaudible). And so I'm calling again on behalf of my dad (inaudible) Los Alamos (inaudible). And of course, we're calling (inaudible) --

MS. NEWSOM: Excuse me, ma'am. You're breaking up, and I can barely hear you.

MS. JACQUEZ: Well, I'm speaking about as clearly and loud as I can. Can you hear me now?

MS. NEWSOM: Thank you. That's a little better.

MS. JACQUEZ: Okay. And so anyway, they're (inaudible) over 10,000 claims. And claimants, I think this point was brought up before, that the claimants were not notified about any changes in

this law. And as far as I'm concerned this is not acting in a respectful manner towards the claimants, and (inaudible) not allowing them to voice their opinions. So I call it (inaudible). This program has not been claimant (inaudible). It was supposed to be. It claimed to be claimant friendly, but it has not (inaudible).

UNIDENTIFIED: I can't hear.

UNIDENTIFIED: I can't hear her.

MS. JACQUEZ: And this Act --

MS. ROBINSON: I'm sorry. I cannot hear a thing she's saying. This is Teresa from --

MS. JACQUEZ: You want me to (inaudible)?

DR. ZIEMER: The recorder is having difficultly hearing you. You'll need to speak very loudly.

MS. ROBINSON: If she is on a speaker phone, ask her to please pick up.

MS. JACQUEZ: Let me switch phones, okay?

DR. ZIEMER: Yeah.

MR. ELLIOTT: There's also a background conversation going on that I would ask be stopped.

MS. ROBINSON: Yes. I hear that, too.

MS. JACQUEZ: Are we not supposed to have

anyone in the house? I'm just curious. I'm at home. I'm calling from home.

DR. ZIEMER: No, that's fine.

MS. ROBINSON: Now I can hear --

MS. JACQUEZ: I hope so, because I didn't ask anyone to leave. So if you are hearing a comment, my sister and I are here. We're both survivors.

MS. ROBINSON: And ma'am, if you could please repeat your name again for me.

MS. JACQUEZ: Epifania Jacquez, E-P-I-F-A-N-I-A, Jacquez, J-A-C-Q-U-E-Z.

And I'll start by saying that I am a survivor. And that I'm calling in regards -- this is in regards to my father, Miguel (inaudible) Almada, worked at Los Alamos for 34 years, and who died from esophageal cancer. And I'm calling in regard to this proposal, you know, to change this cancer relief.

And I want to start by saying that there are over 10,000, and claimants were not or have not been, myself have not been notified of any changes. And I believe that that lacks a lot of respect. I'm just voicing my opinion, but it lacks a lot of respect by not allowing claimants

to voice their opinions. And to me this section of this law, this program, has not been claimant friendly. (inaudible) thought to be (inaudible) beginning, but (inaudible).

And the Act was centered around the cancers, 22 cancers were named (inaudible) acceptable (inaudible) started the program. One of these cancers was esophageal cancer, which (inaudible) died of. How can you even consider removing this from the requirement after three years? Even if it applied to (inaudible), as far as I'm concerned if you were included originally in the Special Exposure Cohort, all you had to do was (inaudible) was prove exposure.

This is not fair to claimants, it's not fair to their families. It is not acceptable. We demand you obliterate this rule. In my opinion it's not constitutional. In the law which was signed by President Clinton, by then President Clinton, it's a law. Do not turn yourselves into lawmakers because you are not.

And I think that we're right now calling this a conference call, and we're calling to give an opinion or a comment, but it also (inaudible). And (inaudible) the answers to these questions

that we're asking on these issues. We're not. We're not. We're just expressing what we feel. But I think that we need to get some answers, and I think there aren't any answers to justify what (inaudible). There are no answers.

No answers, well, you know, you can just -- how many people, how many of these 10,000 people, are aware of this conference call today, call in and voice their opinion? I think we're -- you know, it's what I have heard before, one of my sisters expressed, you know, it's like we're (inaudible).

It all goes back to money. That's what it is. It goes back to money, goes back to power. It goes back to the fact that we're not that important. I'll tell you one thing, it's a shame that our government goes back on their word. I'm proud to be an American, but I want our government to stand behind (inaudible) and deliver the goods that they promised.

So I want you to think about this. I don't know if it's at all possible, because I know that your Board is there and they're listening to it. You have the answers. I'd like a little bit of a response to the comments that's been made. And

thanks.

DR. ZIEMER: Okay, thank you.

And was there another person --

MS. SHINAS: Yes, and I apologize for being late. I wasn't able to get here when you started the meeting.

My name is Betty Jean Shinas, and I'm the daughter of Miguel Almada, and I am a survivor. And I just basically wanted to say that the numbers that are calling in today are not really a true reflection of the families that would be affected by the change that you're proposing to make. And I just really, I strongly support the idea, please think about abiding by the spirit of the law that was passed three and a half years ago by President Clinton, and to not change (inaudible).

And many of our families, especially my dad with his records, there was not -- the dose readings were missing. Three of those years were missing. And to exclude many of those cancers, these families are not going to be compensated in any way. And I really truly want you to take to heart what you are considering. And I'm here to support all of these comments in support of not

changing it. I am truly, truly in support of these comments. Just leave it as it is. It was done to try to compensate families, and the change would really be a disservice to all these families.

Thank you.

DR. ZIEMER: Okay, thank you.

We still have a couple of minutes if there are other members of the public who have comments.

UNIDENTIFIED: Hello?

MS. TRUJILLO: Hello?

UNIDENTIFIED: I signed on.

DR. ZIEMER: Okay. Who is speaking?

UNIDENTIFIED: (Inaudible)

MS. TRUJILLO: This is Gloria -- oh, I'm sorry. Is there someone else?

UNIDENTIFIED: That's okay, go ahead.

DR. ZIEMER: There appear to be two of you.

UNIDENTIFIED: Yeah, go ahead.

DR. ZIEMER: Gloria, go ahead.

MS. TRUJILLO: I'm Gloria Trujillo.

MS. ROBINSON: What's your name again?

MS. TRUJILLO: Gloria Trujillo, and that's G--L-O-R-I-A, and that's Trujillo, T-R-U-J-I-L-L-O.

And I'm also a survivor claimant.

And it's my understanding that NIOSH intends to make a change in the qualifying cancers for a Special Exposure Cohort. I'd like to express my strong disagreement to these changes. I feel this is very unfair to all claimants including survivor claimants. How can NIOSH make a decision that discriminates one claimant's qualifying cancer type requirement from another because they are in one qualifying group or another?

The law that was enacted originally with all the qualifying cancers should be adhered to by NIOSH. It's my opinion that to do otherwise would raise the question whether this is unconstitutional, and whether NIOSH has the authority to change this rule at all. That's mainly what I was calling about. I strongly disagree. I feel that it should be (inaudible) adhere to the original law that was enacted three years ago.

DR. ZIEMER: Okay. Thank you, Gloria.

And there's one other gentleman?

UNIDENTIFIED: George.

DR. MCKEEL: Yeah, this is Daniel McKeel.

I'm a physician and a pathologist who has been advising and helping Denise Brock and the group in St. Louis for the Mallincrodt chemical workers.

My comment is, number one, to express interest in this issue and to also comment as a -- specifically as a pathologist. It seems to me that the scientific basis for disallowing various kinds of cancers as possibly being caused by radiation exposure is really terrifically unsound, that it is very well known if you read a book like the Fajardo/Anderson Radiation Pathology book that came out two years ago, that every bodily system can have radiation-induced cancer. So that's the first thing, to object to the scientific basis for excluding cancer.

The other comment is that I have had actually three or four years' experience with dealing with the health related data of the Mallincrodt workers, and to make this very short, just to say that I've had extraordinary difficultly getting from Department of Energy through Freedom of Information Act requests any really usable medical data on these patients, much less on their -- including actually requests about their

death certificate information.

So I would strongly support the idea for this group, at least, that the special cohort mechanisms are the way to go, because I doubt seriously, unless some new evidence is forthcoming, that the doses that they really received could be accurately reconstructed. And we don't have time to go into that more, but I just wanted to say that.

So I'm very interested. I'll keep tuned to what's going on. And if there's any way I can help, I'd certainly be happy to do that.

DR. ZIEMER: Thank you, doctor.

MS. NEWSOM: Excuse me, Dr. McKeel. Could you spell your last name, please?

DR. MCKEEL: Yes. It's M-C-K-E-E-L, first name is Daniel.

MS. NEWSOM: Thank you.

DR. MCKEEL: Thank you.

DR. ZIEMER: Thank you.

Was there another person?

UNIDENTIFIED: Yes, this is George --

UNIDENTIFIED: Yes, there is.

DR. ZIEMER: I'm sorry?

MR. BARRIE: This is George. I'm a sick

worker.

DR. ZIEMER: George, did you give your last name?

MR. BARRIE: Barrie, B-A-R-R-I-E.

And first of all, I'd like to thank the Health and Human Services for listening to the Board and public, and agree to extend the comment period from May 6, 2003.

The reason I am interested in this rule is that I have three precancerous conditions now. I am not dead yet, okay. From what I understand, the rules as they stand now say that NIOSH can limit the cancers in certain classes of workers from the 22 legislated by Congress. Am I correct in my understanding that this means that myself, a machinist from Rocky Flats who worked there almost ten years, who ingested plutonium and americium, could potentially be limited to, for instance, just lung cancer? If I develop cancer in my stomach, which I have chronic atrophic gastritis which is directly related to a chemical or radiation ingestion per Merck's Manual, even though that it is a covered cancer, that I might not be compensated?

That is beyond not being fair. That is

idiotic. And I'd just like -- I just get all this anger coming up. It's like, what do you guys mean? Twenty-two cancers legislated from EEOICPA for Special Exposure Cohort, I personally think that there needs to be more cancers and diseases covered. Please do not limit any class to any specific cancer, because you know as well as I do if you ingest any specific radiation it might decide to go to your kidney, and then decide to pick up and go to some other organ or some other part of your body.

And I'm experiencing that kind of thing. You can't just say it's going to go there, because it went to my kidneys, it went to my liver, and it went -- apparently I'm not supposed to have any kind of lung burden, but yet I'm on C-PAP, and they can't explain it.

So please, understand that we don't know enough about radiation, and we probably never will know enough about radiation. And this is strictly a personal thing, and you can't begin to even lie about something like this. And you need to kind of have a little bit of trust in all of these workers and survivors. We can't even come up with something this outrageous and be a lie

(inaudible).

So please, treat us professionally. That's all I've got to say. And I'm really sorry, but I'm just -- I'm getting worse each day, and I have all kinds of problems with the joint spacing in my bones. And it's just -- it's really bad. It's a mess. And I'm not going to cry or give you a pity-pot here, but I just want you to know that it's not getting better for us. And I appreciate you dealing with it.

UNIDENTIFIED: Where were you working when you ingested plutonium and americium?

MR. BARRIE: Rocky Flats. And I have documentation, and I have some documentation, but I've had other nasal smears taken from downdraft tables that I've worked on and they were conveniently lost.

And I just get really angry about all this stuff. And I try and keep my composure, but when I have a chance like this to speak my emotions take over. And I want to apologize if they've taken over too much on you guys. I really like a lot of you people that have been working with us like Mr. Silver and Mr. Miller, and would like to say hi to everybody else that's on the phone.

And please understand my emotions, and that's probably about all I've got to say.

UNIDENTIFIED: How long did you work at Rocky Flats?

MR. BARRIE: Almost ten years. I've machined alloys that I can't even discuss still. So I can't even get into anything more.

DR. ZIEMER: Thank you, George, for those comments.

Now our thirty minutes of public comment period has now elapsed, and we're going to --

MR. BARRIE: I'm really sorry.

DR. ZIEMER: That's all right.

And we're going to move on to the Board's discussion at this time. As I indicated earlier, if we complete the Board's discussion before the 5:00 o'clock period, we will certainly allow additional time for other public comments.

But it's important that the Board now has some time to deliberate. Everybody is welcome to listen in to the deliberations. These are public deliberations. We simply ask members of the public to listen. This is not a time where we have an interchange with the public, but you're certainly welcome to listen to our own

deliberations as we proceed.

Board members, I do want to ask you all, is there anyone on the Board that does not have the *Federal Register* actual version rather than the 90-page version of the proposed rulemaking? Because I would like to operate now out of the *Federal Register* version if we can. That should also be helpful to any members of the public who have downloaded it.

UNIDENTIFIED: How many pages is that?

DR. ZIEMER: The *Federal Register* version is maybe 14 or 15 pages.

UNIDENTIFIED: (inaudible)

MR. GIBSON: Dr. Ziemer, this is Mike. I do not have that with me.

DR. ZIEMER: Okay. Well, Mike, I'll try to stick to dealing with section numbers and so on. Actually I do have my other copy with me, so we can go back and forth if we need to.

MS. MUNN: This is Wanda.

DR. ZIEMER: Yes, Wanda.

MS. MUNN: I have not -- I didn't download the *Federal Register* --

DR. ZIEMER: Okay, so you're still working off the other version, then?

MS. MUNN: I'll try while we're talking to go to the --

DR. ZIEMER: Well, it may not be necessary. I'll try to make sure that in each case we know which section and paragraph we're working on.

MS. MUNN: All right. I had just assumed that we --

DR. ZIEMER: At the end of the last meeting we had gone up through Section 83.12, and it was indicated to the Board that we would open our deliberations with Section 83.13. That's in the original sort of typewritten version that began on page 79. In the *Federal Register* version that section begins on page 11308 in the middle column. And the title of the section is, *How will NIOSH evaluate petitions, other than petitions by claimants covered under 83.14?*

Does everybody have the section that we're talking about?

UNIDENTIFIED: Yeah.

DR. MELIUS: Dr. Ziemer, this is Jim Melius.

Just a reminder, Tony Andrade and I also did prepare and circulate something on the issue of facility, which refers --

DR. ZIEMER: Right. And we will return to

those earlier sections. That actually was an outgrowth of the section on -- Section 83 -- well, it was the section on definitions actually, definition of facility.

DR. MELIUS: Right.

DR. ZIEMER: And we will return to that.

This Section 83.13 had several issues that we flagged before.

One issue was more of the rewording issue on section -- let me get the right number here -- it would be paragraph (a) -- no, I'm sorry, paragraph (b), Arabic (1), Roman numeral (iii), and I believe Wanda had a concern about the wording of that paragraph. It currently says:

"In general, access to personal dosimetry data and area monitoring data are not necessary to estimate the max radiation doses."

Wanda, that was --

MS. MUNN: I believe I provided all of you with a suggested wording, more simplistic revision of wording. Did everyone get that or not?

DR. ZIEMER: Do you have that wording there, Wanda?

MS. MUNN: Yes, I do.

DR. ZIEMER: Could you read the wording for the record, that you're proposing?

MS. MUNN: Yes. The suggested wording was:

"In general, access to personal dosimetry and area monitoring data is not a defining factor that must be available in order to estimate the maximum radiation doses which could have been incurred by any member of the class."

UNIDENTIFIED: (Inaudible)

DR. ZIEMER: Do you want to read that once again, then?

MS. MUNN: Yes.

"In general, access to personal dosimetry and area monitoring data is not a defining factor that must be available in order to estimate the maximum radiation doses which could have been incurred by any member of the class."

DR. ZIEMER: And this is not intended to be a change in the intent of the paragraph so much as a change in how it's expressed.

MS. MUNN: It's intended to be clarifying language only.

DR. ZIEMER: With clarity.

Do any of the Board members object to recommending that change in language?

[No responses]

DR. ZIEMER: Okay. If not, we'll consider that agreeable.

Now the other thing I had flagged -- and this is the item that we've heard a number of comments on -- is the very next paragraph, would be Roman numeral (iv), that says:

"If NIOSH determines that it is not feasible to estimate radiation doses with sufficient accuracy, it will also determine whether such finding is limited to radiation doses incurred at certain tissue-specific cancer sites, and hence limited to specific types of cancers."

And I had simply flagged that, that that was an issue that the Board wished to discuss further. We've heard some comments from members of the public on this. We've heard some comments from NIOSH staff on the thinking behind this. And it has to do with whether or not if you can demonstrate, even though there may be unknown doses, if you can demonstrate that in fact certain organs were not actually exposed, then would you then allow cancers to be included if you could show that particular organ was not exposed, even in the cases where the dose to

other organs were unknown? And I would like to sort of open this for general discussion, if Board members have any questions on this.

MR. GIBSON: Dr. Ziemer, this is Mike Gibson.

DR. ZIEMER: Yeah, Mike.

MR. GIBSON: I have one example I'd like to give to you.

The biokinetic models for tritium exposure is known. However, folks that have worked around tritium systems and tritium labs, taken apart pipes, fixing that, tritium can actually adhere itself to the rust in the pipes, and then it becomes embedded in that rust. And when that pipe is cut out or taken out, it can become an airborne particulate that is lodged in the lung as an ingestion rather than an absorption in the skin. And that metal is insoluble, so therefore that tritium sits and radiates the lung tissue rather than following the biokinetic model that tritium would have by skin absorption.

So there's probably different processes with different isotopes that once things happen throughout the years, how can we really know that it was going to be (inaudible) specific organ or part of the body?

DR. ZIEMER: I don't know whether you're asking that as a rhetorical question, Mike, or if you're asking someone to comment on it specifically.

Obviously the people who attempt the dose reconstruction would initially have to determine whether or not in such cases the tritium in fact continued to stay with the metal in the body or whether it didn't. Tritium normally would be considered a whole body -- distributed whole body, and therefore all organs would be subject to it. And so you'd immediately have your list of 22 right away, unless you could somehow show that there's no way it could have detached itself.

MR. GIBSON: Well, Mound's had quite a history of this, not only from certain projects (inaudible) were classified where they actually used tritium and embedded it in certain metals. But just from naturally-occurring rust, people were never monitored for that. So you have not only the insoluble metal dosing the lung for however long you have the toxicity of whatever type of metal the pipe may have been made of.

DR. ZIEMER: Right, right. Well, I'll just

comment without looking at this closely, but -- and of course tritium is known to adhere to metals, but there are virtually no cases where it doesn't exchange with surrounding water molecules. So one would expect that that would end up with a whole body exposure in any event. So it would be hard for me to see in that case where you would end up excluding any organs. But that's just sort of top of the hat. I think one would have to take specific cases and analyze them.

As I thought about this -- and let me just -- we can think about certain examples, and my guess is in most cases you're not going to have -- it would be very hard to find a condition where you had complete restriction.

But as an example, suppose you were able to show that there was a class of workers who did x-ray diffraction work -- a commonly used analytical tool, by the way -- and the x-rays from x-ray diffraction units are of such low energy that you simply can't physically irradiate any of the deep organs. You can irradiate the skin and the lense of the eye. You simply -- it's physically not possible to deliver dose to

any deep organs. So I asked myself, well, what would you do if you had a class of workers in that category? In other words, would you say, well, okay, let's certainly consider skin cancers, but if it's not possible to deliver dose to, say, the spleen by this mechanism, then why would you include it?

I just ask that rhetorically. And the thing is, you can think of a lot of special cases. You might think of cases where maybe extremities only were exposed. You don't know what the exposure is, but you knew that there was some kind of a limit on what was done. That's the scientific question. I think the sort of political question and the history of the rulemaking -- or not the rulemaking, but the legislation, is kind of a different issue.

But technically speaking, it seems like one could conjure up cases where it might not be possible in a -- I mean, I sort of look at it this way. In any event, you -- not all exposures deliver dose to all organs, number one. And number two, you may not know the dose with certainty to some set of organs, but you still can't defy the laws of nature in terms of what

organs could be exposed in a particular case if you knew something about either the nuclide or the nature of the exposure, even if you didn't know the total dose.

So I'm just kind of throwing out ideas here so that I can stimulate your thinking. I want you to come back against me on this and challenge it.

DR. MELIUS: Okay. It's Jim Melius.

DR. ZIEMER: Yeah, Jim.

DR. MELIUS: I guess my problem with it is I can think of those examples, but when I think of (inaudible) also examples where we could be able to estimate the dose.

DR. ZIEMER: Maybe, maybe not.

DR. MELIUS: Well, I just find it hard to come up with the example where (inaudible) not going to be able to estimate the dose, especially given the criteria that they (inaudible) here. And then we would want to somehow (inaudible) so they would be able to have enough information to limit the organ systems affected in some way, whether it be by exposure or some other factor.

And what I worry about is if we try to -- because we're trying to go through, we're going

to have a list of whatever, 20-some cancers to go through, and we're going to have to try to figure out which ones are maybe affected or not in a situation where we're not going to have enough information or we have very little information about the exposure. And I wonder how we're going to --

DR. ZIEMER: Well, in those cases the less you have the more organs you'd have to include. I think that gets more like the uncertainty issues in the regular cases. I just think about things like, for example, there's a limit to how much, if you were talking about inhaling something like uranium, there's a limit to how much mass you can actually put in the lungs. So you could, yeah, get an upper limit in one sense for a lung dose, and could say, okay, how much of this material, if you could physically get this much into the lungs, what would the dose to other organs be? I mean, you can do that exercise.

DR. MELIUS: But then why couldn't you also calculate a maximum dose in that situation?

DR. ZIEMER: Well, you could only in the sense that it would be -- it might be an outlandish dose, and it would be -- you wouldn't

know whether it was something between, let's say -- I don't know, I'd have to pick out a number -- but between zero and some outlandish figure. So yeah, in that sense you might be able to (inaudible) it.

But is that a dose reconstruction? You would certainly pay off for a lung cancer. The question is, would you for other organs if you could show that even in that worse case you couldn't deliver doses to the other cancers (sic). You're saying that that wouldn't be a Special Exposure Cohort, then?

DR. MELIUS: Yeah, that you've been through a maximum dose in that situation.

DR. ZIEMER: I see.

DR. MELIUS: And I think the -- at least (inaudible) -- and I actually think we should go back and discuss that, because I have some (inaudible) how they define that.

But assuming we were using that definition, (inaudible) think that situations where we're not going to be able to define a maximum dose are going to be situations we're going to have so little information that (inaudible) about a source or sources of exposure or how people

worked in there, whatever, that there will be so little information that I don't see how we could then have, would then have enough information to be able to limit organ systems involved. But whether it be due to an exposure possibility issue or some other plausibility issue here that (inaudible) then they could calculate which cancers would be, could be included and which shouldn't.

And I guess I worry that we end up making either very arbitrary decisions about what gets included or not included without any basis for doing that, any way, any sort of rational basis for making that cutoff.

DR. ROESSLER: This is Roessler.

Just to kind of continue this and expand on the not defying laws of nature, I think, Jim, that there are some fairly clear-cut ways of doing this.

And one of the examples that I think came up early on in our discussions was to look at the organ that's being considered to be in a class or not. And if you look at that organ and you say what kind of a dose would it take, and you have to go back to the compensable definition, what

kind of a dose would it take to make that organ compensable? Then if you -- let's say it's the thyroid, and the particular case I think that was used was plutonium 238 to the thyroid. Then if you go back and you say, well, what kind of a dose would it have taken to the lung? We don't know the dose, we can't reconstruct it. What kind of a dose would it take to the lung in that situation?

And I come up, by running some numbers and using dose coefficients, I come up with something like 5,000 rems to the lung. Well, that defies the laws of nature. In order to have that kind of a big, that big a dose to the lung, the person would not have lived through it. So there's some pretty clear-cut things that I think could be done.

MR. GRIFFON: This is Mark Griffon.

I think, Gen -- just to pick up on Gen's point -- I think you just made a very interesting point. You're basically saying that they are using IREP in this thing, or that it is the underlying principle --

DR. ROESSLER: Not really, no.

MR. GRIFFON: Because I agree -- huh?

DR. ROESSLER: Not really IREP, but -- well, using the compensable definition, and then using the -- some basic science to --

MR. GRIFFON: Well, I mean if you go back to page 13, the question I have from the preamble. And this is the old version -- I'm sorry, page 15 in the old version. The preamble discusses --

DR. ZIEMER: It's the section called *Accuracy of Dose Reconstruction under Summary of Public Comments,* Roman numeral III, Item B. Is that the section? That's page 13 in the old version.

MR. GRIFFON: I'm sorry, it's actually page 15.

DR. ZIEMER: Okay.

MR. GRIFFON: So it's under the same section, *Accuracy of Dose Reconstruction.*

DR. ZIEMER: Right.

MR. GRIFFON: Yeah, over on page 15, in the paragraph starting --

DR. ZIEMER: In the *Federal Register* version it's -- I'll pull it out here for the benefit of those using the *Federal Register* version -- it's page 11296, I believe, under *Accuracy of Dose Reconstruction.* And it's the paragraph that starts out, “The Health Physics Society?”

MR. GRIFFON: Right. And about halfway down that paragraph they talk about radon progeny or uranium, only concentrate or -- and significantly irradiate.

And I think Gen is getting at that definition of “significantly.” Is that triggered by compensable, which I see as just a back door way to get IREP in this thing? But that's my opinion. So I guess that's a question to NIOSH: What do they mean by “significant”? What is a significant dose?

I agree with what Gen said and with what Jim Neton has told us earlier, that you get an exposure to the lung from uranium, the predominant organ might be the lung, but other organs will get some dose. Then at what level is this cutoff of significance? Is it based on the, more likely than not, under the IREP POC model? Or are they using some other metric to determine significance there? I guess that's what's not clear within this new structure, to me anyway.

DR. ROESSLER: An incident I gave as an example is one example that I tried to think through as to where this would apply. And I guess, too, I would like some clarification on

some of the wording here and how the process actually would work. Is what I'm saying a reasonable scientific process? I think it is, but I'd like to hear more from NIOSH on this.

MR. GRIFFON: And the question with Paul, with -- this is Mark Griffon again, I'm sorry.

Paul, with your example, I just -- I'm sitting here wondering myself -- and I'll just throw it out since we're discussing it -- but I wonder if in your x-ray diffraction example if you knew the individual's exposure, how is that currently handled in the IREP model? And are all organs at least considered to have some potential probability? I don't know the answer --

DR. ZIEMER: Well, I think in the current IREP model the energy is plugged in --

MR. GRIFFON: Right.

DR. ZIEMER: And Jim would have to help me here, but once you plug the energy in you calculate doses to the individual organs, much like you would do for a beta emitter.

MR. GRIFFON: Right, I guess my question --

DR. ZIEMER: If it's a deep-lying organ, you're not going to find -- you know, let's say --

MR. GRIFFON: So are those probability curves zero? That's my question on those.

DR. ZIEMER: Yeah.

MR. GRIFFON: I guess they would be, but I'm not sure. I haven't done that exercise in IREP. But I think we'd want to certainly be consistent with that.

MR. ELLIOTT: Dr. Ziemer?

DR. ZIEMER: Yeah.

MR. ELLIOTT: This is Larry Elliott.

DR. ZIEMER: Yeah, Larry.

MR. ELLIOTT: Let me react a little bit here.

First of all, I want to remind you all that a comment period is a time for the Department to listen to comments from the public --

DR. ZIEMER: Right. This is not a final rule.

MR. ELLIOTT: -- and the Advisory Board. You're right, it's not a final rule.

And it's not a time for the Department or the staff here at NIOSH to interpret this pending rule or debate the meaning of the rule with members of the public or the Board. In our listening role we do not want to engage in any type of communication that any individual or

group may feel (inaudible) represents or serves to misrepresent the Department's offering of interpretations of the rule.

Therefore, we're going to continue to limit ourselves to directing you to pertinent parts of the proposed rule or to the statute for your discussion where we think it might provide clarity. We've very interested in hearing the comments from the Board and the public, and we encourage everyone to provide those written comments to the regulatory docket as indicated in the proposed rulemaking.

Let me just say this, too. Each dose reconstruction that we do considers the type of radiation exposure and the type of cancer that the employee contracted. It is also true, as in examples we've presented to the Board, the feasibility of a dose reconstruction can depend upon the type of radiation exposure and the type of cancer the employee contracted. The dose reconstruction for an employee with colon cancer and unquantified radon exposure may be perfectly feasible, while it might be impossible for a coworker with lung cancer.

The statute requires a determination that the

dose reconstruction is not feasible for HHS to add a class to the SEC. This Notice of Proposed Rulemaking proposes that the proposed class not include persons for whom a dose reconstruction can be done.

I think Jim's got something else he wanted to follow up with on that.

MR. NETON: Well, I think I was just going to add that when we approach a dose reconstruction we apply the efficiency process that is outlined in 42 CFR 82. In doing so, we complete the dose reconstruction as far as we need so that Labor could make an unambiguous decision regarding compensability. Now if that would be a maximizing assumption that would be an unreasonable -- a reasonable exposure given the circumstances of the person's work environment, we could do that and complete the dose reconstruction again by applying the efficiency process.

So the answer is not all organs are irradiated (inaudible), so when a certain organ is irradiated -- certain cancer types in certain organs, we can make certain very -- a broad (inaudible) assumptions by applying the

efficiency process to complete the dose reconstruction. That's the way it works.

MR. ELLIOTT: As well, pointing back to language in the NPRM, we used the phrase “may.” We may, where appropriate, because of the ability to do dose reconstructions for certain cancers, we may define a class. Because we -- the statute also requires us to do dose reconstructions where feasible.

Thank you.

DR. ZIEMER: Okay.

Other Board comments?

DR. ROESSLER: Paul, this is Gen Roessler.

I have a question that came up while Larry was talking. There's a certain comment period, and the period has been extended. At the end of that time does the Board deliberate again, then being able to take into consideration public comments or anything else that might come up?

DR. ZIEMER: No. The process is the public comment period is really for the benefit of the Agency, which is going through rulemaking.

MR. ELLIOTT: Dr. Ziemer, if I may?

DR. ZIEMER: Yeah.

MR. ELLIOTT: This is Larry Elliott.

Yes, just for everybody on the call that may not have been made aware of this, at the Board meeting on March 7th the Board recommended that the comment period for the second Notice of Proposed Rulemaking for the Special Exposure Cohort be extended to 15 days, for a total of 45 days of public comment. The Board indicated that it also wanted to ensure that both the Board and the public had adequate time to review and comment on its proposal, especially in light of significant changes that the first public comment produced.

The Department has agreed with the Board's recommendation that a longer comment period is desirable and has decided to provide an additional 30 days of comment, making the public comment period 60 days. And that deadline is now set for Tuesday, May 6th.

And you're quite right, the process is that at that point on that day the public comment period will close, and then the next step will be for us to review, evaluate, consider, and address those comments towards promulgating a final rule. So the Board must complete its business by the 6th.

DR. ZIEMER: Which is basically just over a month away.

Now obviously you can take into consideration public comment that you've already heard. There may be additional ones that are submitted in writing and which would then appear in the record and so on. But in one respect the Board's comments are another set of comments that is considered by the Agency as well as the public comments. But it's technically not our job to -- we don't respond directly to public comments. That's the Agency's process, where they take those into consideration in going to the final rule, as they take our comments into consideration.

And at this point -- well, let me tell you that I've sort of -- I've kept tabs as we've proceeded here, and actually have drafted based on things we've already reviewed, our comments up to this point. And what I do need to determine, what we need to determine, is what our comments will be on this section or on this particular issue.

The Board can make general comments. They can raise concerns. They can recommend specific

wording. There's a whole variety of directions that we can go. Whatever we recommend is something we need to agree on as a Board. It may be helpful to, as we discuss this here, to get some idea of your individual views on this issue in terms of your comfort level on how NIOSH has delineated this in the proposed rulemaking, your discomfort level if that's more appropriate, or any alternatives.

DR. MELIUS: This is Jim Melius. I guess I'll start things off.

I guess my discomfort level is very high with two sections of this. One is how well NIOSH has delineated this whole issue of sufficient accuracy of dose reconstruction and the parameters they placed on that. And then secondly, I think flows out of that, is really the lack of delineation on this issue of specific cancer sites.

And I think I can see from the public comment period this time and last time, that's raised a lot of -- a lot of people are upset about that. But even aside from that, I just find it very hard to follow what they're doing and seeing how that is justified. I can see it in some sense in

a theoretical sense, but then when I (inaudible) back to a practical applied sense I see no limits on how NIOSH may choose to apply this, and how the Board can get involved in trying to make judgments on -- in reviewing NIOSH's application and making recommendations on which cancers should include.

And I'm just -- I just don't think the rule in these two sections as currently drafted is workable (inaudible) NIOSH as well as recommendations on how to improve that.

DR. ZIEMER: As far as process is concerned, if things proceeded as outlined here, as I would understand it, if a proposed class was defined -- and let's say the proposed class was defined in terms of facility and a time period and so on, and let's say some subset of cancers in the main list -- that proposed class would have to come to the Board under this process.

DR. MELIUS: Correct, and then the Board would have to make a recommendation. Presumably NIOSH would recommend that certain cancers be covered (inaudible).

DR. ZIEMER: Right. And I would presume that in such a case the Board would be looking for

some kind of justification for this limitation that we're focusing on, and would have the opportunity to say that doesn't make sense scientifically or whatever.

DR. MELIUS: Yeah. But my concern, Paul, and this is that we don't -- I don't even know how -- we don't even have the parameters to make that judgment and to do it in a consistent and non-arbitrary fashion. This is so -- these rules are so general that -- I keep going back to this case-by-case issue.

And I think the same thing applies when we are reviewing dose reconstructions, whether there was enough information to reconstruct the dose with sufficient accuracy. That rule is so vague, so general, that I think it would be very arbitrary as to -- again, we're going to be in a position of having to review at least some of those, that it's going to be very difficult to again draw the line.

And I'm (inaudible) very disappointed that NIOSH hasn't made more of an effort to define this better, to explain this better to us and to the general public.

DR. ZIEMER: Okay, other comments?

MR. GRIFFON: Yeah, this is Mark Griffon.

DR. ZIEMER: Mark.

MR. GRIFFON: Yeah, I also think -- I'm thinking about our role on the Board and these cases coming back to us. And the question comes, in my mind, again comes up that how was the determination made? Whether it's right or wrong, set aside for a second whether it's right or wrong to limit the list of cancers. But if a determination was made for one particular SEC class to limit their (inaudible) only two cancers or whatever, how was it made that -- how was the determination made that the other ones did not receive significant dose, whatever? What was the cutoff, what was the rationale used to make that determination?

I'm not sure -- you know, I've been saying, well, this significant stuff is only in the preamble. That's correct, but I just don't think that's clearly delineated in the rule itself. And again, we're going to be put on the spot to agree with that decision or disagree with that decision. So I think some clearer guidance up front in the rule is needed, so everybody has something to turn back to on that.

DR. ZIEMER: It'S a little difficult in the absence of a specific group of cases to actually delineate anything other than the process, I guess, at this point. Is that not correct?

I assume in the process that there would have to be something that convinced first NIOSH staff and then the Board that in fact that made sense, that it somehow made sense in a particular case or cases that would say, yeah, it makes sense that these particular cancers aren't included because something about either the nature of the nuclides involved or the process involved that those particular organs could not in any case have been exposed.

And again, it seems to me the more uncertainty there is in that, then the more likely it is you would have to include organs rather than exclude them.

DR. MELIUS: But how do we define that uncertainty, is the --

UNIDENTIFIED: That's the question.

DR. MELIUS: This is the problem I have, when you can't see --

DR. ZIEMER: I'm asking if you can do that á priori. I don't know the answer to that.

DR. MELIUS: Oh, I know you don't. I'm just saying that's the issue.

We all go back, kind of go back to the science of it and sort of the IREP approach and what we've constructed for when we are going to do dose reconstruction, and we know how difficult and how much uncertainty there is with that. We have a system that factors in that uncertainty.

Now we're in a situation where we can't do even (inaudible) a maximum dose, and then now we're trying to then make some (inaudible) on either on exposure or odds of exposure or organs that are (inaudible). I guess (inaudible) I think that has to be much more carefully delineated before it would really be something I could see being something that would be workable.

MS. NEWSOM: Excuse me, was that Dr. Melius?

DR. MELIUS: Yes, it is. I'm sorry.

MS. NEWSOM: Thank you.

DR. ZIEMER: I suppose -- I'm trying to think here in terms of the nature of the comments the Board can make on this, and we have a mix of backgrounds on the Board also.

But it seems to me that we might be able to construct something that indicates that we

recognize that in principle scientifically such situations might exist, that in practice we see some practical difficulties in actually doing what is proposed, and therefore may have some questions on the extent to which this selectivity issue can actually be carried out.

Again, I'm trying to help us think about what we can say that raises -- to some extent this issue needs to be flagged. It already has been flagged to the Agency by the public. I think there is some on the Board that feel that scientifically or at least in principle you can argue that it doesn't make sense, that in practice it may be very difficult to actually carry it out, and therefore is it of practical value.

MR. GRIFFON: There's one other thing to remember in this, Paul -- this is Mark Griffon, I'm sorry -- one other thing to remember, and that is that in order to get to this specific cancer side of the equation, and I guess it just ties back into the sufficient accuracy question, the first hurdle says that we can't determine dose.

Then if I, for a second, if I accept the

logic that if we know the source term and a reasonable amount about the processes, then we can in some way establish a maximum dose. That, in the current language, that meets the definition of sufficiently accurate. So you're already admitting, if they get past that hurdle, you're already saying we don't even have sufficient information about the source term, et cetera. And this is my circular argument here, that then you're going to try to limit organs when you've already said we can't even establish a maximum.

And under these guidelines, again, I'm not sure -- I'm not saying that I agree with this principle, but under these guidelines it says we can use maybe as little as source term information and processing information to be sufficiently accurate with a maximum estimate. If we can't even get to that hurdle, then you're saying but we know enough about the source term that we're sure it's only this isotope, or it's only -- they were only involved in x-ray diffraction exposure, so therefore we're going to limit the list.

I guess that's the other side of this, is

that -- that we need to consider.

DR. ZIEMER: Yeah. I can think at least in principle that there might be cases where you know something is present, that it's this and only this nuclide or these and only these nuclides. But perhaps the amounts are unknown, or there's something unknown about the process or the configuration or where people were, all of those uncertainties.

Now we know that certain kinds of dose reconstruction, at least limiting one, might be done even in those cases where we said yeah, there is no more than one microcurie of this stuff present in this whole site or something. That's one thing. But if the amount -- if the information -- there's got to be some information. That is, we've got -- you sort of have to know that there was something there, right?

MR. GRIFFON: Yes. Well, I'm just going by the definition presented in the text in the proposed rule for a second, you know, where they say that's sufficiently accurate. And I'm looking for it now.

DR. MELIUS: This is Jim Melius.

One of the -- two things I want to bring up. One is one of the practical issues that bothers me is that if when we're (inaudible) can't even estimate a maximum dose, how well do we really know that there's a limited source, that there's only one source? And I think the situation with Paducah and so forth with the plutonium and so forth, which whatever reasons wasn't recognized or acknowledged for a period of time, that there could be other things present there, and that changes this whole situation.

But to the other example I'd use, though, would be what if we had sufficient accuracy for a dose reconstruction to find differently and it was something other than a maximal dose, it was something, certain amount of dose records being available or coworker data or area sampling, something less general. So we'd have Special Exposure Cohorts where there would be -- you would not have -- would not be able to do their dose reconstruction under that scenario, but we might be able to do their maximal dose.

In that case then we'd have something to work off of to maybe look at some limitations of which cancer sites would be involved. At least we'd

have a little bit more certainty that we -- in terms of what we would be dealing with. Now of course, we'd want to define what we meant by being able to do a maximal dose, and so forth and so on. But to me that would give us an entree into making some of these determinations.

I just worry --

DR. ZIEMER: You're saying suppose you could reconstruct to the point where you said there was a maximal dose, that it met the probability of causation criteria for compensation?

DR. MELIUS: Yeah.

DR. ZIEMER: And you assign that to everybody?

DR. MELIUS: Yeah.

DR. ZIEMER: But that's a dose reconstruction, I believe --

DR. MELIUS: I'm also saying what if the definition of dose reconstruction was different? I guess what worries me is we've made -- by using the maximal dose as the test of sufficient accuracy for a dose reconstruction, what is left that allows us to make any sort of specification of a cancer site? I just find it very hard to come up with practical examples that that would

apply.

Now if we were in a situation where sufficient accuracy for dose reconstruction was -- has other parameters on it such as area exposure, whatever, but would not -- but then will you still be able to do a maximal dose, a maxed estimate of maximal dose, then at least there's a number to work off of and so forth, something to apply. But here, in a practical way, we're going to be -- a lot of guessing involved. And I find it hard to come up with practical examples.

DR. ZIEMER: Okay.

Others on the Board have comments?

DR. ANDRADE: Yeah, Paul, this is Tony Andrade.

DR. ZIEMER: Tony.

DR. ANDRADE: It appears that we've reached an impasse here to at least a couple of items.

One, let me take the trivial one first, and that is the way the law is written -- not law, the proposed rule is written with respect to this particular paragraph. That's 83 -- what is it, 14?

DR. ZIEMER: Thirteen.

DR. ANDRADE: Thirteen, Roman numeral (iv). We need a little bit more clarity for the public as well as ourselves to understand that this may be a way to -- and I believe either help define a group, or alternatively to discredit whether or not a (inaudible) whether a group really should exist for a certain situation. So I think there needs to be some writing in there that provides further clarity. But like I said, this is the least of the two ideas that I have. That's one.

But number two is the following. I think that we can all sit here and think of an infinity of potential situations or, for example, of what might metastasize from one site to another, whether or not it was caused by internal or external exposure. And I really believe that it may be that this -- what we should really -- the way we should handle this is that if ever NIOSH has to invoke the potential use of looking at specific cancer sites, that those cases be presented to the Board. I can -- for our advice, for our comment, so that they can go forward with these.

Practically speaking I agree with you, Paul, in that I don't think that we're going to see a

lot of these cases. But there -- I'm sure that we will see some. And I can think of my own example, you ingest plutonium or americium, it goes to the liver first, and over the course of your lifetime it goes, it starts to transform out into your bone. So you can't just look at liver cancer. You're going to have to look at bone cancer and perhaps others that metastasize from these.

So what I'm saying is that to go around this impasse, at least for now, I would propose that somewhere in the rule, the proposed rule, that we very clearly specify that if this is ever invoked, that this immediately goes to the Board for review. And I think there's value added there. I think there will be due diligence in review of the cases and sending them back to NIOSH for a relook in case there are people that would sit on the Board that have legitimate and strong concerns about the possibility that specific cancer sites may very well have effected the cancer to another site.

DR. ZIEMER: Okay, thanks, Tony.

I would like to point out that under the provisions of Section 83.15 the Board in fact has

to consider all petitions to the Special Exposure Cohort. So are you suggesting something other than the process that's already here? It says the Board will consider the petition and the NIOSH evaluation, and then the Board may obtain additional information not addressed in the petition.

DR. ANDRADE: No, not really, Paul. What I'm trying to do is say that I really think that the wording should be there that goes above and beyond what is said for just any petition; that in particular with this very controversial situation that, number one, we're not eliminating looking at any of the 22 cancers, that we emphasize that, and that we also emphasize the fact that if this is invoked that this will receive --

DR. ZIEMER: Receive added attention in some way.

DR. ANDRADE: Added attention by the Board.

DR. ZIEMER: Are you suggesting something along the lines where in any cases where the Special Exposure Cohort is limited to, let's say, less than all of the cancers on the list that the NIOSH staff would have to have specific

justification for excluding of any cancers?

DR. ANDRADE: Absolutely.

DR. ZIEMER: How do others of you feel about that kind of an approach?

MR. PRESLEY: Bob Presley. I agree with that.

MR. GIBSON: This is Mike Gibson.

I guess I'm just kind of concerned that, and based on hearing some of the public comments, does NIOSH have this legal authority to take this interpretation based upon what was presented in the legislation?

I, personally as a Board member, don't know that I would feel comfortable even entertaining looking at something that NIOSH has come up with that may be -- that may in fact not be with the spirit and intent of the law, any kind of comment or debate on a petition that NIOSH has come up with a recommendation or a denial on. So I would be more comfortable if NIOSH had Congressional approval to keep this section in here, if that was truly the intent of Congress.

MR. ESPINOSA: This is Richard Espinosa.

I agree with exactly what Mike's saying. If we're going to limit the 22 cancers, I totally

believe it's unfair and it's not the intent of Congress.

MS. MUNN: This is Wanda.

DR. ZIEMER: Okay, Wanda.

MS. MUNN: I, in the first place, cannot conceive in my own mind the wording that would get around this problem adequately. May be in there, but I don't know what it is.

And secondly, perhaps I'm missing a key point here. I do not understand either the public concern or what other people are talking about when they talk about limiting the number of cancers, reducing the number of cancers that are covered by the law. I don't see that this is what this section does at all.

It appears to me that what this section is doing is talking about how one can approach the issues that are before us with respect to Special Exposure Cohorts. And I don't see that that's reducing the specified cancers, and the specified cancers are there for a reason. There is a scientific (inaudible).

So I am at a loss. I have not heard anyone suggest that they could provide wording that would clarify the intent that the individual has

in mind for what this ought to say, other than what it does in fact say. I don't see that it's giving NIOSH undue authority over and above what the law has (inaudible). And I certainly can't guess what the Congressional intent is, having in the back of my mind what that sense of Congress' statement included, which was completely erroneous and not factual.

I guess I think we may have a situation where we can't meet everyone's desire to be specific enough and broad enough at the same time to cover what the issue is here.

DR. ZIEMER: Well, obviously there is a concern that we -- regardless of the extent to which one does or does not agree with how the law was generated, it does exist. And I just want to suggest that how we understand that law may not be completely clear cut.

I'm reading from the section on *Special Exposure Cohort,* where the criteria is, one, "it's not feasible to estimate with sufficient accuracy the radiation dose to the class (inaudible)." This is in the law. They use the words "with sufficient accuracy." And then two, "there's a reasonable likelihood that such

radiation dose may have endangered the health of the members of the class." And that's the way the law reads.

Now the issue of likelihood that it endangered the health, when I look at that from a scientific point of view I have to first ask myself -- and we're talking about cancers here, and all of them are potentially included -- but if it's a specific cancer I have to say to myself, is there a likelihood that radiation endangered that person's health or the people in this class by delivering dose to the organs of concern? I mean, I can read that in the law.

So to the extent that the law says that you have to sort of make that determination, one can argue this approach. I'm trying to be a devil's advocate on this side now. But all I'm saying is I don't think it's completely obvious that the law says that any of the 22 cancers applies in every exposure situation, because that does not meet the test of reasonable likelihood that the health was endangered if you have a particular case where you simply couldn't get -- again, theoretically -- couldn't with either the exposure scenario conditions or nuclides or

radiation source have delivered exposure to a particular organ.

But in the absence of specific cases it's very hard to come to grips with that notion. That's part of the struggle here. And I think it would be possible to include statements that indicated that some Board members have concerns about the appropriateness and so on. I know this is an issue that's kind of at the heart of many of the things here. It certainly is in the public, it's a very crucial issue, and I think we have to be cognizant of that. We are also charged by law to do certain things as a Board.

MR. GIBSON: This is Mike Gibson again.

DR. ZIEMER: Yeah, Mike.

MR. GIBSON: I guess just my point is the daily records are so inadequate. We've had a lot of discussion about source term, and maybe DOE's records are not adequate that that was the only source term, there could have been other isotopes mixed in or whatever else. But just in reading the certificate we got from President Bush, it says it's our duty to fulfill the duties of the law.

DR. ZIEMER: Yeah.

MR. GIBSON: And if so, if we have such varied opinion, what's the objection to, whether it's NIOSH or the Board, going back to Congress and asking them what their intent was? I mean, we all have our own interpretation of the law, but I don't know that that's our right. I think we should get it clarified by the folks that have the authority to implement this legislation.

DR. ZIEMER: I don't know if anybody can speak to that question, Mike, and at this point I'm not sure we can simply say to the Secretary, take this back to Congress.

MR. ESPINOSA: This is Richard Espinosa. What's preventing us from doing that, Paul?

DR. ZIEMER: I don't know. I don't know the answer to that.

DR. MELIUS: This is Jim Melius.

I certainly think we can put in a comment to the effect that given what we've heard from the public that this is, as well as members, some members of the Board or whatever, that there is a concern about this and whether this interpretation is appropriate given the basic background legislation, and that's an appropriate way of communicating that. Unless NIOSH or HHS

provides us with some other information, which it's my understanding is they (inaudible) not during the comment period.

MS. MUNN: This is Wanda.

I have real reservations about the political ramifications and the scheduler problem involved in requesting a Congressional review of this portion of the law. My personal assessment is that you will push back any claims that you have currently ongoing that might fall into this Special Exposure Cohort at least a year and a half, and probably longer than that. I can't imagine that you could get this question through both houses of Congress this calendar year. Just can't imagine it would happen.

MR. ESPINOSA: Dr. Ziemer, this is Richard Espinosa again.

You know, I don't believe it has to go through -- even if we can get some of the head staffers over this issue to comment on it, I think that will help out a lot. I'm just feeling really, really uncomfortable with this right now.

MS. MUNN: This is Wanda.

I'm afraid that we were placed in an uncomfortable position when we agreed to take

this responsibility. And from my observation, NIOSH has done an incredible job of trying to put together, and in most cases very successfully so, the kinds of rules that would appear to cover as best one can the meaning of the law.

As I heard someone say, we can't interpret it. One has to interpret it if you're going to carry it out. That may make us feel as though we are not fully competent to do that, but then no one is.

DR. MELIUS: This is Jim Melius.

All we're saying, at least I was recommending, is that we go back and ask for clarification on it. I'm not saying things should be delayed because of that. That's their decision. And to say that's going to take a year and a half and somehow hold up something is ridiculous.

I think that we communicate this issue needs to be clarified. And then it's up, then, to the Secretary and NIOSH to determine how they go about doing that. For all we know they may have done that already in the comment period or whatever other procedure they have, they may not want to share any of that information with us.

So I think all we're saying is that should be a comment from the Advisory Board, and let it -- doesn't mean we will hold up our comments or that we hold up the regulation. That's up to them.

MR. ESPINOSA: I agree with Dr. Melius, and I'd like to see that in the form of a motion.

DR. ROESSLER: Before we go much further, maybe it's because the connection has been bad -- this is Roessler -- it's not clear to me specifically what questions are or what the comment is. So I wish maybe Jim could repeat that, or Rich.

DR. ZIEMER: Rich, I think was your comment.

MR. ESPINOSA: On that last part, what Dr. Melius was saying, I would really like to see what Congressional intent was on this, and based on what Dr. Melius was saying basically put it in the form of a motion from the Board, or from Dr. Melius. I can't repeat his exact words on that last statement.

DR. DeHART: Paul, this is Roy.

DR. ZIEMER: Yeah, Roy.

DR. DeHART: In my experience with regulations I don't think that Congress is in the void on this. It's now in the *Federal Registry*

[sic]. They study the *Federal Registry*. There are those advocates who will make sure that the appropriate people in Congress will oversee it. And if they have concern they will raise that concern, and it will be documented and they will be heard from. So I'm not worried about that. I think that certainly will happen if the concern is that that degree of level of height.

I do agree that there needs to be somewhere along the way satisfaction within the regulation or within the preamble as to how this concern is raised, and why it is not in violation of what is presumed to be the previous regulation.

DR. MELIUS: This is Jim Melius again.

I think all we're suggesting -- I agree with Roy, that other (inaudible) may take this up also, including people from the appropriate staff. And I believe Richard Miller already addressed that in the public comment period.

But all we do, that we simply say that raise the concern. We've heard it from the general public, heard it within the Board, and that this issue needs to be clarified. And then see what happens.

Now whether we can seek clarification, obtain

clarification within the comment period, I don't know. But I think for better or worse we just should certainly raise the issue, something we've heard from the general public.

DR. ZIEMER: And again, keep in mind that in any case where, as we've already indicated, where something did come forward that actually had such a limitation in it, the Board would actually have an opportunity to require that there be a justification. It would have to make sense to the Board as well as to the staff.

DR. MELIUS: Jim Melius again.

My point earlier was not that this was not going to come to the Board; we knew it was going to come before the Board. But how was the Board going to make sense of, evaluate this coming forward when it was such a vague and general regulation? It provides no parameters for making that -- at least parameters that I can (inaudible) how to judge one case from another or know where to draw the line. And agreeably, (inaudible) individual cases will vary. But one would think there would be some more specific parameters, so when this (inaudible) cancer issue would apply.

DR. ZIEMER: Okay, we've heard a number of comments. Are we at a point where we can have some level of specificity?

There's an issue on, or there's some suggestions that our comments include some clarity on -- that was clarity on, I guess, on the definition of sufficient accuracy? Or what was the clarity issue? Just on the process?

DR. ANDRADE: This is Tony Andrade.

It was more on the process in which particular -- in which this particular, I don't know, mechanism would be (inaudible) invoked to make a judgment that cancer is not likely from (inaudible) for a given group.

DR. ZIEMER: And also some suggestion that NIOSH be asked to somehow confirm the intent of Congress, or --

UNIDENTIFIED: Correct.

DR. ZIEMER: Is that sort of the notion, Jim, that you're raising?

DR. MELIUS: Yeah, that NIOSH clarify the appropriateness of this procedure given the whole list that was in the legislation, as well as what the intent of Congress was with that legislation.

DR. ZIEMER: What I'm going to suggest doing

here is -- I've jotted down a number of things. I'm thinking what I might do is draft a straw man and get it out to everybody to look over pertaining to this section, which means we will have to have a final conference call in a few weeks to agree to it. But I don't know that we can draft it right now.

I wonder how others of you feel about that approach?

MS. MUNN: This is Wanda.

I would very much like to have some words to be looking at, very much.

MR. ESPINOSA: Dr. Ziemer, this is Richard Espinosa.

I agree with what Wanda is saying. It's -- there's a lot out there right now, and to me it's getting a little bit confusing as well. So I'd like to see some words before this section kind of continues, and with another public -- not another public comment period, but with another Advisory Board conference call.

DR. ZIEMER: Right, okay.

I will piece something together here, and actually what I will plan to do -- well, we'll go on to some other items, but I'll piece something

together. I may want to shoot it out to a couple of you to take a preliminary look at, and then -- particularly those who raised the issue, make sure it captures everyone's ideas, and then get it out to the Board. And then we would have to discuss it in probably another conference call two or three weeks from now.

But let's proceed and see what else we have to deal with before us, okay. Is that agreeable?

DR. MELIUS: Yes.

DR. ZIEMER: Now let me see, we're still here in this same section, 83.13. Are there any other things in this section that anyone had, 83.13?

[No responses]

DR. ZIEMER: Okay, what about 83.14, *How will NIOSH evaluate a petition?* Were there any issues on that one? I didn't have any flagged from before.

[No responses]

DR. ZIEMER: On 83.15 I didn't have anything flagged. Does anyone have any items on that section?

MS. MUNN: This is Wanda.

DR. ZIEMER: Yes, Wanda.

MS. MUNN: I recall -- oh, I was told that

was okay. I raised the issue about privacy issues early on, and I was reassured about that.

DR. ZIEMER: You're okay on that?

MS. MUNN: (Inaudible) covered.

DR. ZIEMER: Okay, 83.16. I did make a note on 83.16, item (c). Someone had raised the question as to whether or not there should be a time deadline inserted in the time for final decision on designation of a class. Did we decide that we could not mandate that to HHS?

MS. MUNN: My memory of our original discussion was that we sort of ran out of (inaudible) without coming to any conclusion whether it should or should not be there. But I think the general tenor that I recall was that we really couldn't do that.

DR. ZIEMER: Yeah, I think that's right. I think we just left it with the assurance that this would be done in a timely fashion following the Agency's normal process, so that it doesn't need to have a timeline in it. There is a timeline on HHS providing information to the petitioners and so on, so that's already in there.

Okay, then let me go back, and I'm going to

identify for you the items that we have already agreed on, and then we come to one item that we need to discuss in a little more detail dealing with facilities.

We agreed to -- let me give you page numbers here, 112296 [sic], column three; and in the old version this is the section on public comments on the accuracy of dose reconstruction, I believe. Yeah, *Summary of Public Comments,* Section B on *Accuracy of Dose Reconstructions.*

MR. ESPINOSA: What page is that, Paul?

DR. ZIEMER: It's 11296 in the *Federal Register*, and it is page 15 in your typewritten version. In the *Federal Register* it's column three, paragraph two, last sentence.

Simply that the statement is confusing.

I think, Wanda, this was your item, and we're just asking NIOSH to rewrite that sentence to clarify it. So it's not a substantive change.

MS. MUNN: No. I wasn't asking for a change in meaning. I was just --

DR. ZIEMER: Right.

Page 11303, column one, paragraph two, we are asking -- in the second sentence we are asking for the insertion of the word “occupational”

after the word “sufficient,” so it reads, “If the employee had sufficient occupational radiation exposure outside of the work as a member of cohort.” So it was just specifying that it was additional occupational exposure. That was more of an editorial.

Then page 11306, column three, *Definitions.* We had flagged that. There was concern about the definition of a facility, and we had asked Jim and Tony to develop some wording on the use of the word “facility” in this document.

Now as a starting point, and Jim and Tony had distributed, I believe, a one-pager called facility definition issue. Did everybody get that?

[Affirmative responses]

DR. ZIEMER: Distributed by Cori.

And they point out that there is a definition of facility in Subtitle B, Section 3621, that is in the regulation itself. And there also is in the -- that was in the legislation. In the bill regarding Special Exposure Cohort there is a statement on the *Designation of Additional Members of the Special Cohort,* and the statement that says “The Advisory Board shall advise the

President where there is a class of employees at any Department of Energy facility who were likely exposed," and so on. So there's those two uses of facility in the legislation and in the bill.

And then there is a recommendation on this paper that says -- and it's the last paragraph on the paper by Jim and Tony -- that says:

"For the purposes of this draft regulation, the Board recommends that "facility" should be considered broadly (e.g., Los Alamos, Rocky Flats). Then the "class" definition would be used to limit the class to those workers who worked in some specific operation(s) at the facility and whose dose could not be reconstructed with sufficient accuracy. If facility was defined to refer to specific buildings, etc., NIOSH would have to spend considerable effort developing an inventory of defined "facilities" at each DOE site and would have difficulty considering new SEC classes for workers in operations that might have taken place in more than one building or "facility" at a DOE site."

So as I read it, it's this last paragraph that Jim and Tony are recommending be included in

our comments.

Is that correct, Jim and Tony?

DR. MELIUS: Correct.

DR. ANDRADE: Yes, that's correct.

DR. ZIEMER: And let me ask you also, is it your motion that we should include in this rulemaking the official definition of facility that shows up in the legislation? Some of the other definitions are repeated from the legislation as well. Would it be helpful to have that in here as well?

DR. MELIUS: The problem is that there are two definitions of facility that are not quite consistent with each other. There's one of an AWE facility which talks about facility in a broad sense, and there's another one where it talks about a Department of Energy facility which talks about facility in a much more building-specific sense.

I think what's (inaudible) some of those make sense, because what the definitions are used for in the legislation are to determine which employees are eligible. So it's an employee working in such a facility, any such facility.

DR. ZIEMER: Right, right.

DR. MELIUS: And if one looks through the legislation and looks for (inaudible) talks about exposure, then it never talks -- the bill, at least the section I read, never talked about the exposure at a facility, or restricted to a facility in any way. It just talks about an employee having an exposure, but doesn't limit that exposure to facility the employee worked at or whatever.

So Tony and I in our e-mail discussions about this, if you remember from the last conference call, sometimes it's somewhat a question of perspective. My perspective is that Los Alamos is a facility. I think of it that way. Tony, who works there, knows lots of different facilities at Los Alamos. I'm sure it's the same with Wanda and everybody else who worked at what those of us on the outside refer to as a facility or think of as a facility.

But if one then -- I think in our deliberations if one thinks of how -- what we're going to be doing in terms of a Special Exposure Cohort, it sort of makes sense to think of facility in the broad sense and then use the -- define the class in a way that would limit the

people that were eligible for that Special Exposure Cohort to maybe defined as an operation, maybe defined as working at a particular building or whatever. Lots of ways would be appropriate to do that, but not use the definition of facility in order to make that restriction if that restriction is appropriate. I think the --

DR. ZIEMER: It's more the idea of not starting from the narrow point of view and working outward, but starting from the broader point and then narrowing down to the class from there, is that correct?

DR. MELIUS: Yeah. I think the example used there is that if one had to go through and define it in each building, building facility, would be difficult. At the same time, there's a concern that if one defined a special cohort as the facility, then the whole -- everybody who ever worked at the facility would be part of that cohort. And I think the way this process works, class would be defined and would be used, what would be used to restrict the eligibility, those that are in the class. That's how you'd define the class.

DR. ZIEMER: Are you, Tony, Jim, are you

suggesting that this would somehow be part of the definition section, or just a comment to -- in other words, are you suggesting -- would you be suggesting to NIOSH that they include an operational definition here in this section, such as you describe?

DR. ANDRADE: Jim -- this is Tony.

I think Jim and I would both like to see this included in the definition section. And I would just like to point out that I think this provides us with the flexibility that the entire Board would like to see, where facility, as Jim stated, is really an entire complex, if you will, in certain cases like Los Alamos --

DR. ZIEMER: Or could be, yeah.

DR. ANDRADE: And that a class can be used in many instances for a variety of instances. It could be a building; it could be an operation; and so on. And so if that is clarified, then I believe it will make life easier for ourselves and for NIOSH.

DR. ZIEMER: Okay. Are you -- for proposes of getting kind of closure on this issue, let me suggest that one of you move the adoption of this recommendation.

DR. MELIUS: Jim. I move.

DR. ANDRADE: And I'll second.

DR. ZIEMER: Okay. Now, Board members, want to comment pro or con on this recommendation? And the motion would be to adopt this last paragraph as a recommendation with the intent that it be included in some form as an operational definition, right?

DR. MELIUS: Correct.

MS. MUNN: This is Wanda, and I'd like to make a friendly recommendation. I think that Tony and Jim have captured the crux of the matter, and have proposed wording that would both clarify and simplify what needs doing.

I would suggest that rather than repeat the two definitions, which might have a tendency to muddy the water even more, that what we suggest be included in *Definitions* is the statement which would begin with one preceding sentence, that sentence being “There are two definitions of facility existing in the legislation under Subtitle B, Section da-da-da, and Section 3626, Designation,” period; then the last paragraph, “For the proposes of this draft regulation the Board recommends.”

DR. ANDRADE: I have no objection to that. This is Tony.

DR. MELIUS: Yeah, same. That's fine with me.

DR. ZIEMER: Okay, any other comments?

MS. ROBINSON: Paul, this is Teresa from Cambridge Communications. Could you make sure you repeat (inaudible)?

DR. ZIEMER: Repeat what?

MS. ROBINSON: Repeat what Wanda just said.

DR. ZIEMER: Wanda, can you repeat that?

MS. MUNN: Yes, I can.

I suggest that in addition to the last paragraph which we are going to -- we are looking at as potentially including in *Definitions,* that we precede that paragraph with a single sentence which reads, “There are two definitions of facility existing in the legislation, namely, in Subtitle B, Section 3621 and Section 3626, *Designation of Additional Member of Special Exposure Cohort,”* period. Then begin the final paragraph as written by Jim and Tony, “For the proposes of this draft regulation,” et cetera.

DR. ZIEMER: And we can take that as a friendly amendment, right?

MS. MUNN: Yes.

DR. ZIEMER: Okay. Did you get that?

MS. ROBINSON: Yes, I did. Thank you.

DR. ZIEMER: Again, Board members, any discussion, pro or con?

[No responses]

DR. ZIEMER: There appears to be none. Is that correct? Are you ready to vote?

[Affirmative responses]

DR. ZIEMER: All who approve this suggested change, say aye.

[Ayes respond]

DR. ZIEMER: Opposed? Let me just ask it this way. Are there any Board members opposing the change?

[No responses]

DR. ZIEMER: Any abstaining?

[No responses]

DR. ZIEMER: I'm going to take that as, rather than a roll call, everybody then voted yes, just for the record.

DR. MELIUS: This is Jim Melius.

Just one follow up. Tony and I did not get into the issue of facility versus facilities issue, the plural issue there, just so that's

understood. I'm not sure we're capable of it this Friday afternoon.

MR. ESPINOSA: Paul?

[No responses]

MR. ESPINOSA: Dr. Ziemer?

[No responses]

MS. HOMER: Uh-oh, we've lost him.

MR. ESPINOSA: Is this Cori?

MS. HOMER: This is Cori.

MR. ESPINOSA: It sounds like we lost everybody.

DR. ANDERSON: I'm here. It's Andy. I'm here.

MS. MUNN: Wanda's here.

[Affirmative responses]

MS. MUNN: I'm fearful we've lost our leader.

MR. PRESLEY: Bob Presley. I'm here.

DR. ANDERSON: Maybe he put his on mute.

MS. HOMER: Entirely possible. We will have to wait for a couple of minutes to see if he can reconnect.

MR. ESPINOSA: Did the public get cut off too, or --

[Negative responses]

MS. BROCK: This is Denise Brock. I'm here.

MS. SHINAS: Betty Shinas. I'm here.

MS. JACQUEZ: Epifania Jacquez, I'm here.

MS. GONZALES: Carmen Gonzales, (inaudible).

UNIDENTIFIED: Quick, let's take a vote.

[Laughter]

MR. ESPINOSA: Cori, this is Rich. There's a lot of background noise.

MS. HOMER: Yeah, I know.

UNIDENTIFIED: Yes, there is, and it's really interfering.

MS. HOMER: Yeah, it is. I'm not sure where the background noise is coming from.

UNIDENTIFIED: Those who have mute, if you could --

DR. ZIEMER: This is Ziemer. I got cut off. I'm back. Did we -- did others get cut off, or just me?

MS. HOMER: I believe so, it was just you.

UNIDENTIFIED: If anybody -- if everybody who has a television or something could please mute.

DR. ZIEMER: Did that background noise come on when I came on?

MS. MUNN: No, it did not. It was on while you were quite silent. Somebody had something going on in the background (inaudible).

DR. ZIEMER: The last thing I had was everyone had agreed to Wanda's friendly amendment. Were there other comments at that point? Oh, we voted, didn't we?

[Affirmative responses]

DR. ZIEMER: I was still on when we voted.

MS. NEWSOM: Dr. Melius? Dr. Melius, you made one comment about the difference between facility and facilities.

DR. MELIUS: I was just -- yeah, that's when everybody left (inaudible).

Tony and I, we didn't get into the issue of facility versus -- what facility meant, whether it mean facilities or facility.

MS. MUNN: This is Wanda.

Under the kind of broad definition that you've given in here, I don't see that it's a problem.

DR. ANDRADE: Wanda, this is Tony Andrade.

The issue before us is one that has been -- the question, I think, came from the public, and that's the way it came about. And that is whether there was any real limitation on defining a special cohort or a piece of a special cohort that could cross facility boundaries.

And I think the comment that Jim made earlier was that we might not be able to handle this this afternoon. However, personally I feel that we should not put any boundaries or limitation -- I'm hearing background conversation.

DR. ZIEMER: I am too.

DR. ANDRADE: We're trying to conduct business here. If you're going to conduct background conversations, please mute your phone.

In any case, what I would like to say is that I would really like to see either in the definitions, perhaps immediately following what we just said with respect to the definition of facility or in some other part of the proposed legislation, that a group -- that is, a proposed group that would be considered as part of a special cohort not be limited in any way to cross boundaries. I personally don't see any reason why we can't be specific about that and just adopt it this afternoon.

DR. ZIEMER: When you say boundaries, be more specific.

DR. ANDRADE: Yeah. I'm saying if somebody out there really believes that a group can actually be -- set of people that worked at

Livermore and then worked at Mallincrodt and then worked at maybe another place, or just two places, and that this group comprises a situation in which their doses could not be reconstructed at either of the buildings or operations or so on and so forth that they were involved in at two different facilities, as Jim and I have defined it, I don't see why that could not be considered a Special Exposure Cohort.

DR. ZIEMER: The only time that this would be important would be if they didn't meet the 250-day criteria at one or the other, and they needed to add it together? Because otherwise they meet the criteria anyway.

DR. ANDRADE: Right. And I think that --

DR. ZIEMER: And you only need one.

DR. ANDRADE: You only need one. But what --

DR. ZIEMER: But suppose they have 200 days at one and 50 days at the other. Is that the case you're talking about?

DR. ANDRADE: Exactly, exactly. And I don't see any reason at this point to limit potential petitioner from that sort of definition.

DR. ZIEMER: But you haven't included that here? That would be a separate comment?

DR. ANDRADE: It would be a separate comment. I'm saying that I think we can work this one out this afternoon.

DR. ZIEMER: Well, let's have input from others.

MR. OWENS: Dr. Ziemer?

DR. ZIEMER: Yes.

MR. OWENS: This is Leon Owens at Paducah.

I'm struggling right now, in all due respect, to the prior deliberation in regard to your comment to circulate a draft to the Board, final recommendation.

Paducah, Portsmouth, Ohio, Oak Ridge, and the Amchitka Island test site in Alaska, those facilities were designated as Special Exposure Cohorts. And I think the expectation from the other sites throughout the country is that they also will be treated in a like manner when they petition for exposure cohort designation. And I think that it is plain, the legislation is plain that would allow these additional sites to petition.

And I think that the Board should consider what the legislation currently states for those sites who have the 21, 22 listed cancers. It

doesn't matter if an individual is a clerical worker or if they're a process worker, if they're hourly or if they're salaried. Provided that they meet the Congressional intent, they qualify under the Special Exposure Cohort for compensation. And I think that is the expectation for the other sites who are covered under the DOE complex.

DR. ANDRADE: Are you suggesting -- this is Tony Andrade -- that, for example, Los Alamos in its entirety, all 47 square miles with all 7,000 employees, could actually be considered as a special part of -- a Special Exposure Cohort?

MR. OWENS: What I am suggesting is currently in Paducah, Kentucky, provided an individual meets the minimum qualifications, the 250 aggregate days, if they have one of the listed specified cancers, by virtue of them being a Special Exposure Cohort designee they receive the compensation.

And I again feel that the expectation of the general public -- we're not talking about individuals who are as well versed in reading legislation as some of us may be; we're talking about individuals who are dying by the day.

We're talking about senior, elderly individuals, and we can call them Cold War veterans if we may. Their expectation is that they will receive the same equitable treatment as these four sites have.

DR. ZIEMER: There is a constraint placed on us by the legislation that does not appear to be there for the others, Leon, and that is that they have to have been exposed to radiation at the facility and that it's not feasible to estimate their dose for dose reconstruction proposes. So those are some limitations that are placed on us by that legislation.

But to the extent that there would be, for example, individuals who are not in the restricted areas where they are exposed, or to the extent there are people whose dose reconstructions can be done, it would appear to me that the legislation requires us to -- in place the restrictions that aren't placed on those others sites.

What the expectation of individuals is is not the thing that -- we have to follow the dictates of the law as Congress imposed it upon us as an Advisory Board. So unless I'm misunderstanding

what you're saying, I think there are constraints that perhaps aren't there in the legislation that set up the original exposure cohort. They are much more inclusive, as I would see it.

MR. OWENS: Well -- this is Owens again, Dr. Ziemer.

I understand your comments. But again, I think that from a credibility standpoint -- I'm not expecting or asking the Board to go beyond its authority. But I do feel that if -- the Board should consider the expectations of the public, and that way we would ensure that the process itself is transparent and that the credibility of the Board is (inaudible). Because again we need to consider the individuals who we are addressing, and also the areas within the country where this work was accomplished.

DR. ZIEMER: Okay.

Well, let's see. Are there -- the item we're immediately talking about is whether or not to include something that would allow the combining of exposures at more than one site, which I think would sort of parallel the other situation where the existing Special Exposure Cohorts or locations can be combined to get the 250 days.

How do others of you feel on that issue?

DR. MELIUS: This is Jim Melius.

I agree that it certainly makes sense that if a person worked at more than one site and accumulated dose there, and that site's part of their time that would make them eligible for a Special Exposure Cohort, that it could certainly include more than one site or more than one facility. And it seems to me that when we were discussing individual dose reconstructions, actually some of the examples we used I thought did have more than one site or more than one facility.

And so it certainly on scientific and practical grounds it doesn't make sense that a person would have to prove themself in multiple Special Exposure Cohorts, couldn't accumulate time or whatever or other eligibility-related issues for this to make them eligible for compensation. So I think that does make sense.

MR. PRESLEY: Dr. Ziemer, this is Bob Presley.

DR. ZIEMER: Yeah.

MR. PRESLEY: That definitely makes sense for Oak Ridge. Many, many times we've had people

that have worked at Y-12 (inaudible) sites (inaudible).

DR. ZIEMER: Others?

MR. ESPINOSA: You're talking about with just the -- this is Richard Espinosa --

DR. ZIEMER: Yeah, Rich.

MR. ESPINOSA: You're talking about with just the accumulation of the 250 days, correct?

DR. ZIEMER: Yeah. For example, if -- let's say they were at two completely different sites, maybe not even -- maybe Los Alamos and Rocky Flats, say; and didn't have the 250 day total at one or the other but together did have; and in both cases were in situations where they would otherwise be in Special Exposure Cohorts, I think is what we're talking about, in both cases where you couldn't do dose reconstructions.

MR. ESPINOSA: Okay. I understand that. It's getting -- okay, I understand it in the terms of the 250 days, and I agree with what's being said.

DR. DeHART: Paul, Roy.

If we have an individual at two different sites, would both sites then have to be special cohort in order to accumulate those hours or

those days? The mere fact that one worked at Y-12 and one worked at X-10 to accumulate 250, would that -- would they have to be special cohort --

DR. ZIEMER: Well, in my mind that's what we're talking about, if it's going to parallel, the existing thing. For example, you can get your 250 days by adding together, let's say, two of the gaseous diffusion plant exposures. But I don't believe it allows you to use part of one of those and some completely other exposure that's not on the list, right?

DR. DeHART: That seems to make sense, and that's why I asked the question.

DR. MELIUS: This is Jim Melius.

I also think there might be situations out there, whether it be a group of workers that worked at multiple sites, and that we would want to define that as a Special Exposure Cohort, not worry about --

DR. ZIEMER: That could grow out of the regular process, could it not?

DR. MELIUS: I'm not -- it's not completely (inaudible) that it could. But I think that's one of the other examples we want, (inaudible)

the other situations we'd want to include in (inaudible) possibility for.

MR. ESPINOSA: This is Richard Espinosa again.

I agree with what Dr. Melius said. As a sheet metal worker, I can work at 15 different sites at LANL in just a week's time, and I can be exposed to numerous different items. And so the 250 days is a concern, not to mention we're going to have to rely on the contractor's recordkeeping on where the person was scheduled at at that time.

DR. ANDRADE: Richard, this is Tony Andrade.

That's precisely why I was proposing what we're talking about, is this potential for including different physical locations, whether they are at the same complex or maybe workers who went to different places around the country, so long as they had been employed for a total of 250 days no matter where they were in situations in which they could potentially have been exposed. Then I think that this is a friendly sort of definition that we can use, and that it would be consistent with other policies that we've helped draft.

MR. ESPINOSA: Yeah, I agree with you, Tony, with what you're saying. I hope I didn't make it sound like I wasn't agreeing with you.

But also what Dr. Melius says, in the SECs alone there's going to be classes of employees such as building trades or guards or RCTs.

DR. ANDRADE: Right.

MR. ESPINOSA: So I certainly agree with what's being said.

MR. GRIFFON: This is Mark Griffon.

I agree with Tony's amendment, too, and I just -- I can give one case that I think might help to -- a theoretical case that might to clarify.

I mean, I can think of a situation of the old traveling radiation technician that may have went to several DOE facilities, and they as a group might decide to petition as one class, but they weren't necessarily at just one facility.

DR. ANDRADE: Yeah, right.

MR. GRIFFON: And part of the reason you can't determine their dose maybe is that they were -- the nature of their work, and they had similar types of activities at all the facilities they went to. So that might help clarify it.

But I agree with Tony's recommendation.

DR. ZIEMER: Tony, did you formalize that recommendation in the form of a motion?

DR. ANDRADE: I can't think of the words right now, Paul. Perhaps somebody could help me, but I would say that the class definition is not limited, would not be limited to workers at one facility.

I don't know, Jim. Maybe --

DR. ZIEMER: Tony, it seems to me we could have both situations. One would be a class of workers that were in multiple facilities; the other might be an individual worker who could be part of two classes.

DR. ANDRADE: Absolutely.

DR. ZIEMER: If you understand what I'm saying.

DR. ANDRADE: Yeah.

DR. ZIEMER: But who did not have sufficient time in one or the other facility by itself to be actually in the class who otherwise would be.

DR. ANDRADE: Yeah, that's very inclusive.

DR. ZIEMER: Because it could be a unique situation for that worker in terms of the combination of places they went to, and might

have otherwise been included in an SEC but didn't have enough days at the particular site, but taking two or three sites together perhaps would have. Which could either apply to an individual or even a group at some point that could become a new exposure cohort that included in itself multiple facilities.

DR. ANDRADE: Right.

DR. ZIEMER: But as a starting point that you wouldn't have to have that situation, as I understand what you're recommending.

DR. ANDRADE: That's correct.

MR. GIBSON: This is Mike Gibson.

I have to agree with that, and especially in light of the fact that under 31.61 workers have preferential hiring at other DOE sites, so as a lot of them get laid off at their home facility they move, go on to another DOE facility.

DR. ZIEMER: So what this recommendation would be, something along the lines that the Board recommends that NIOSH consider including or allowing -- I don't have the wording -- allowing the individuals to combine exposures in -- I'm going to put it in just kind of just rough idea -- in what would otherwise be separate SECs in

order to receive the 250 day total.

MR. PRESLEY: Dr. Ziemer, this is Bob Presley.

DR. ZIEMER: Yeah.

MR. PRESLEY: Tony used the word exposure (inaudible) date or something like working days.

DR. ZIEMER: Yeah, working days.

MR. ESPINOSA: Dr. Ziemer?

DR. ZIEMER: Yeah.

MR. ESPINOSA: The preamble says NIOSH will use 250 days employment only when it lacks sufficient basis to establish a lower minimum. Should this be --

DR. ZIEMER: Well, there is a case where if it was an incident like a criticality incident, where all you have to do is show that you were present during -- and that might be like one day. That is a very special case. Is that what you're referring to?

DR. MELIUS: Yeah, this is Jim Melius.

I guess I would -- since we don't have all the examples yet, I just think our language should at least be general enough that what if a person with a series of incidents or whatever that was required, so you're required that you

have three weeks' of high involvement or a series of these incidents or something. I think we can craft language that maybe would use appropriate --

DR. ZIEMER: The incident case, though, generally all you have to show is you're present at one of them and you've made it, right?

DR. MELIUS: I guess all I'm saying is that we don't know that NIOSH is always going to use -- it's only going to be incident cases where you're there, present or not present, or 250 days. Could there be something in between? And I think they've left it open, that they could define it in the absence of a definition.

DR. ZIEMER: Yeah. The, quote, “incident” might be longer than one hour, one day. It might be something less than 250 but longer than a day.

DR. MELIUS: Yeah. And I just think if we make our language appropriate, (inaudible) recommend to NIOSH make it appropriate to whatever parameters that are defined for that.

DR. ZIEMER: Okay. The words need to be polished here.

I'm trying to see, is there kind of consensus? We don't have a formal motion. Is

there a consensus that we should include some wording along this line? Any objection?

MR. GIBSON: Can I make one that -- Dr. Ziemer, this is Mike.

DR. ZIEMER: Yeah, Mike.

MR. GIBSON: One additional comment, that the reference to the 250 day criterion is in the preamble and not in the rule. Should we not also include that part in with this that we're deliberating, the rulemaking part, recommend that the NIOSH?

MR. ESPINOSA: Yeah, that's the point that I was trying to make.

DR. ZIEMER: Oh, I see. That the rule doesn't require --

MR. KATZ: This is Ted Katz. Let me (inaudible) something out here.

It is in the rule. It's not just in the preamble. The rule specifies --

DR. ZIEMER: This is Ted Katz, I think.

Ted, help us out. Where is this?

MR. KATZ: And it's in Section 83.13 -- oh, I don't have my finger on it. I assure you it's in here very specifically. Oh, here. It's under -- these are hard to find -- 83.13, then subsection

-- just above subsection small (c), which is on page 113 --

DR. ZIEMER: Yeah, it's the middle column on 11309, top paragraph.

MR. KATZ: Right. Middle column, top paragraph. That's where it's specified.

MS. MUNN: This is Wanda.

It's also included in the original law.

MR. KATZ: Right. It comes from -- well, it relates to EEOICPA, which specified 250 work days --

MS. MUNN: Correct.

MR. KATZ: -- for the folks at the gaseous diffusion plants. So it relates to that.

DR. ZIEMER: Okay.

UNIDENTIFIED: Give me the page it's on in the typewritten copy.

DR. ZIEMER: Typewritten copy --

UNIDENTIFIED: Page 82.

UNIDENTIFIED: 82.

MR. KATZ: Page 82, the last full paragraph, double I.

DR. ZIEMER: It's about four lines from the bottom on 82.

UNIDENTIFIED: Okay, I see that.

MR. KATZ: Dr. Ziemer?

DR. ZIEMER: Yeah.

MR. KATZ: This is Ted Katz again.

I just thought I'd also help you, at least try to help you out with the two recommendations you're formulating.

The one about defining of classes at potentially including multiple facilities, that one's very clear what you're recommending there.

The second about recommending that days, if you're in multiple classes, if you sort of qualify to be in multiple classes that you would aggregate the days if necessary from multiple classes. But you could do that -- the only clarity I just wanted to give you on that, I think that recommendation you're making is really a recommendation to the Department of Labor, because the Department of Labor will determine compensation. All we're defining is who is included in a class. But as far as aggregating days for people in different classes --

DR. ZIEMER: Yeah, I guess -- the concern we have here, that somebody is excluded from a particular class because they have, say, only 200 days, and also they worked somewhere else and

there's a separate class where they worked, let's say, 100 days. And the point is they should be allowed to aggregate those. And you're saying Labor will already do that? Because they're not in either of the classes since they didn't qualify.

MR. KATZ: No. And I wasn't saying Labor would already do that. I mean, Labor just does that for the folks at the gaseous diffusion plants, aggregates the days.

DR. ZIEMER: Yeah, yeah.

MR. KATZ: What I'm saying, I guess it wasn't clear to me what was being meant, then, about -- are you talking about making a class out of the individuals that are in two separate classes but don't qualify --

DR. ZIEMER: No, not necessarily. That could occur if there was a lot of people that had the same pattern.

I think what we're saying is suppose you have a class, and there's an individual who would otherwise qualify for that class except they don't have enough days. And that individual also worked somewhere else where there's another class, and they don't meet -- they don't have

enough days there either, but taken together would have enough days for that individual.

MR. KATZ: Right. No, so I understood that, really.

I guess my question is are you trying to recommend that NIOSH create this new aggregate class, or --

DR. ZIEMER: Well, does that become a new class if they have two pieces like that?

MR. KATZ: Well, I don't know. I think it's sort of a knotty problem. I mean, with you -- the classes are going to be defined and must be defined generically, I think, in terms of what job categories, et cetera, what time period, as (inaudible) explained in these regulations. But then you're --

DR. ZIEMER: Well, let's talk about the parallels. Suppose you have someone who worked at one of the gaseous diffusion plants but doesn't have enough days there, and therefore is not in that class. Or are they all the same class, all the gaseous diffusion plants are considered the Special Exposure Cohort, so they all -- they automatically combine, don't they?

MR. KATZ: Yeah. DOL just automatically --

DR. ZIEMER: So we don't have the exact parallel here.

MR. KATZ: -- in terms of that 250 days.

DR. MELIUS: This is Jim Melius.

Why don't we just recommend that NIOSH figure out how to do this?

DR. ZIEMER: Yeah, yeah. The intent of what we're trying to do, I guess, is clear. How it would be carried out in a particular case would remain to be delineated, probably. But at least the principle could be there that you might allow this to occur.

DR. ANDERSON: I would agree with that. I don't think we have to wordsmith it for them.

MS. MUNN: This is Wanda.

Didn't we cover that pretty much when early on we added the “occupational” word in the sentence, if the employee had a sufficient radiation exposure, occupational radiation exposure outside of his work experience as a member of the cohort to qualify for compensation, then his dose reconstruction could be completed on the basis of his extraneous work history? Didn't that get everybody --

DR. ZIEMER: Well, that would -- this would

be a case where they didn't qualify for -- they didn't really have other work that qualified by itself.

I don't know. That was in the preamble also, I think.

MS. MUNN: Yeah, it was.

DR. ZIEMER: Again, I'll craft some words here as part of this document, and then you'll have a chance to look at it.

We're getting close to the end here. I want to see if we can sort of finish up where we are.

After the facility issue, Section 1130 -- or page 11307, it's Section 83.9, paragraph (c), Arabic (2), Roman numeral (iii). We had a rewording of that section that was provided by Mark Griffon which we agreed to last time. The rewording of that section is as follows:

"A report from a health physicist or other individual with expertise in dose reconstruction describing the limitations of DOE or AWE records on radiation exposure at the facility, as relevant to the petition. This report should specify the basis for believing the stated limitations might prevent the completion of dose reconstructions for members of the class under 42

CFR part 82 and related NIOSH technical implementation guidelines."

That's what we agreed to last time. I'm just reiterating it here for the record.

Also, on page 11307, column three, Section 83.9, the very next paragraph, (c)(2) Roman numeral (iv), we reworded that section simply to provide clarity. It now will read:

"A scientific or technical report published or issued by a governmental agency or published in a peer-reviewed journal that identifies dosimetry and related information that is unavailable," and so on. And then we delete the last part of the sentence beginning with the phrase "and also finds," to the end of the sentence.

Am I going too fast?

[No responses]

DR. ZIEMER: The next change I have is page 11307, column three, it's also Section 83.9. It's paragraph (3) and continues through the top of the page on 11308. The comment is this:

"This portion of the" -- and this is Jim Melius' work -- "This portion of the section deals with exposure incidents and describes the

process for evaluating the information required for such incidents in the event that NIOSH is unable to obtain records or confirmation of the incident. The Board recommends that NIOSH consider where the placement of this part of the section should be within the rule, since it refers to information required after the petition has been evaluated by NIOSH. As presently located, this portion could be confusing to the petitioner."

And then the next change we have is page 11308, columns two and three. It's Section 83.9 also. It also is paragraph (3), Roman numerals (i) and (ii). I believe this is Jim Melius' wording that we accepted also. It says:

"These paragraphs require either medical information or witness affidavits in the event that the exposure incident cannot be confirmed. For the requirement that two employees who witnessed the accident submit affidavits, the Board recommended that the petitioner be counted as one of these two witnesses if the petitioner was an individual employee who witnessed the incident."

And then another, continuing:

"The Board is also concerned that a petitioner may have difficultly finding witnesses to an exposure incident that occurred many years ago. Witnesses may no longer be living or may be difficult to identify or locate. In such cases the Board recommends that NIOSH offer the option for other parties to submit confirmation of the incident in the absence of available eyewitnesses or records."

And then page 11308, column one, Section 83.11(b):

"The Board is concerned that there is no further appeal process for petitions that do not satisfy the relevant requirements. Accordingly the Board recommends that NIOSH explore possible appeal mechanisms within the DHHS for such cases."

I'll just add parenthetically that was a situation where we had the discussion as to whether the inadequate petition should have yet another appeal route if it was turned down. It would basically be after the second turndown.

And then that brought us up to the point where we started our discussions today, to 83.13.

So that's kind of an overall summary of what

I have so far.

Does anyone -- has anyone identified any additional points that I've excluded here?

[No responses]

DR. ZIEMER: I'm hearing some conversation. Am I missing somebody's discussion?

[No responses]

MS. MUNN: I don't think you are. Somebody's discussion has been going on, office background noise for an hour.

DR. ZIEMER: Then let me ask, we are going to need at least a final conference call.

What I will have will be some proposed wording for this section on -- well, let's see. We'll polish up the facilities thing. I think we're okay. We just need a second point on the 250 day thing, and then need to have the other issue on the specific cancer issue wording dealt with.

So as I say, I'll work on a straw man for that and get it out to you, and then we need to have one final conference call, I would say sometimes in the next few weeks.

Cori?

MR. ELLIOTT: Dr. Ziemer, Cori had to leave

the call --

DR. ZIEMER: Okay. Should we identify a time, though?

MR. ELLIOTT: Yes, if you would, please. We'll have to get it in the *Federal Register*, and so we need to do that before May --

DR. ZIEMER: It would be better if we had at least two weeks to get time for the notice to get out and so on.

MR. ELLIOTT: Yes.

DR. ZIEMER: And that suggests that it be sometimes perhaps no earlier than April 11th. It could go later. Let me try some things here that would still be timely.

How's April 18th?

MR. ESPINOSA: April 18th's perfect for me.

DR. ZIEMER: Anyone for whom April 18th would be bad?

UNIDENTIFIED: Yeah.

DR. ZIEMER: It's Good Friday.

MS. MUNN: I'll be in Beijing.

DR. ZIEMER: Okay.

DR. MELIUS: Jim Melius. That's bad for me also.

DR. ZIEMER: Okay. How about April 11th?

MS. MUNN: April 11th, can do it.

DR. ZIEMER: Two weeks from today.

DR. MELIUS: Yeah, that'd be fine with me. Only thing, we do have until May 6th, so --

DR. ZIEMER: Yeah, so it can be later.

Wanda, you're going to be in Beijing over what period?

MS. MUNN: I will be on the mainland until --

DR. ZIEMER: Starting when?

MS. MUNN: Starting the 15th until the 1st of May.

DR. ZIEMER: We probably could go as late as May 1st if we have to.

DR. DeHART: This is Roy. I will have returned by the 23rd of April.

DR. ANDERSON: How about the second of May?

UNIDENTIFIED: (Inaudible) for me.

DR. ZIEMER: I have a problem on the second.

DR. ANDERSON: The first is okay.

DR. ZIEMER: Roy, you're gone through what period?

DR. DeHART: I'll be back on the 23rd, back in the office on the 24th of April.

MS. MUNN: I could handle the first. I will be back home on the first.

DR. ZIEMER: How are others on the first of May?

DR. ANDERSON: After 2:00 your time.

DR. ZIEMER: Two o'clock May 1st. I don't think we need -- if we just have this one thing to polish up, it shouldn't take quite as long.

DR. ANDERSON: How about 3:00 o'clock Eastern?

DR. ZIEMER: Three o'clock okay?

MS. MUNN: That's fine with the West Coast.

DR. ZIEMER: Three to five?

UNIDENTIFIED: I wouldn't shortchange this one topic, though.

DR. ZIEMER: No, okay.

UNIDENTIFIED: But I hope we can resolve it before.

DR. ZIEMER: Well, if we have draft copy ahead of time we can do some polishing on it.

UNIDENTIFIED: Okay.

DR. ZIEMER: Is everybody okay for May 1st, 3:00 p.m.?

MS. MUNN: Sounds good.

DR. ZIEMER: Larry, okay?

MR. ELLIOTT: Yes, we can do that.

DR. ZIEMER: And comments are due to the

Board -- or to the -- yes, to NIOSH and to the Secretary, then, by the sixth.

But basically what I'm going to provide you with is not only the draft of all the comments, then plus this stuff we talked about today, but I'll also provide a draft of a cover letter which I already have ready. The cover letter doesn't say what we're going to say, it just says that our comments are attached, basically. But it tells a little bit about the process of deliberation for this information.

Okay, we'll plan, then, to meet on telephone conference on April 1st -- May 1st, I'm sorry. This will be open to the public as well. We will have public comment period as well at that point.

MS. JACQUEZ: Excuse me, I've got to ask a question. How are you going to notify 10,000 claimants about this conference call?

DR. ZIEMER: The only way we can do this is the way we do it now, and that's through the *Federal Register* and on our Web site. We have no mailing list for these that I'm aware of.

MS. JACQUEZ: But if they don't have a computer they don't know (inaudible) proceedings is going on. So you're not really fully

informing the public. These claimants are not being informed, and that's not right.

DR. ZIEMER: Well --

MS. JACQUEZ: You have five callers coming in. It was word of mouth. But you need to inform them. Something needs to be done, because you're not informing these claimants about these conference calls --

MS. ROBINSON: Excuse me, who is this --

MS. JACQUEZ: And they need to hear all this.

DR. ZIEMER: Well, we're trying to do it in the way that's legally required, and that's -- we're trying our best.

The intent of the conference call is for the Board to deliberate, and if you have folks that you know that would be interested we'd be pleased to have you pass the word along to them. That would be fine.

MS. JACQUEZ: Well, you might consider finding a way to inform claimants about what is going on here.

MS. ROBINSON: Excuse me, who is speaking?

MS. JACQUEZ: A claimant.

MS. ROBINSON: Say it again, please?

MS. JACQUEZ: It's a claimant.

DR. ZIEMER: Yeah, for the record, I think --

MS. JACQUEZ: For the record I have every right to ask whatever question --

DR. ZIEMER: No, no. But we do keep --

MS. JACQUEZ: Oh, (inaudible).

DR. ZIEMER: We keep a transcript, if you don't mind identifying yourself for the transcript.

MS. JACQUEZ: Excuse me, Epifania Jacquez. And I'm speaking to Wanda, am I not?

DR. ZIEMER: No, that was the transcriber who asked for the identity for the record.

MS. JACQUEZ: Okay.

DR. ZIEMER: Okay, thank you very much.

It's now the 5:00 o'clock hour, and we do need to adjourn. I thank everybody for their participation today. We will then reconvene at the appropriate time on May 1st. And this meeting is adjourned.

UNIDENTIFIED: I'm so glad we have a better connection.

MS. BROCK: This is Denise Brock. Do you have time for any more public comment, or do you have --

DR. ZIEMER: No, we're required to adjourn

this at 5:00 o'clock, so thank you.

MS. BROCK: At five? Okay. Well, I would like to --

DR. ZIEMER: But I would mention, Denise and any others, if you -- the comments, all the public comments are very important for NIOSH in their deliberations. And if you have additional comments it's good for you to write them and submit them. Those will go on the public record and on the Web site, and are accessible to the Board as well.

MS. BROCK: Could you tell me where to send that to? I know I probably --

DR. ZIEMER: Yeah.

Larry, can you give us --

MR. ELLIOTT: If you'll look in the Notice of Proposed Rulemaking, at the back of it it tells you how to submit --

MS. BROCK: Right there? Okay. Well, thank you very much.

DR. ZIEMER: Yeah, that actually -- actually it's -- is it on the last page?

MS. BROCK: I actually have that with me. Let me look, and I probably should have seen it.

MR. GRIFFON: Paul, this is Mark Griffon.

One more question while she's looking. The next call, are we going to have time to -- you said that you're going to work on a straw man for this language. I would offer to give some input to you on that ahead of time.

DR. ZIEMER: Oh, yeah. Oh, yeah.

MR. GRIFFON: On the specified cancer issue.

DR. ZIEMER: Yeah, please do.

MR. GRIFFON: Because this call, I got cut off three times in today's call, and I heard static all -- you know, it was really difficult to exchange ideas.

DR. ZIEMER: I'll solicit from any of you that want to suggest some specific wording, just shoot it in to me and I'll try to fairly meld it together and get it out. How's that sound?

MS. GONZALEZ: If I may, just one additional before we leave, and I'm Carmen Gonzalez, another claimant.

I just need to know when the public commentary is going to take place, because if it's at the beginning or is it going to be at the end, so that people will be -- make sure to be there at the beginning of this.

DR. ZIEMER: I think we'd prefer to have it

at the beginning, so that we're sure to hear that before our deliberations.

MS. GONZALEZ: Okay. That's good. Thank you.

DR. ZIEMER: Thank you very much.

MR. ELLIOTT: Denise, this is Larry.

MS. BROCK: Hi, Larry.

MR. ELLIOTT: If you look on the first page of your *Federal Register* notice and rule, you'll find it there. It says addresses down under *Summary.*

DR. ZIEMER: Yeah, written comments.

MS. BROCK: Yeah, I've got that. And thank you very much. I don't know why I didn't notice that part before, but I appreciate that. And thank you very much.

DR. ZIEMER: Yeah. And actually it's very good to do it that way anyway, because then it really gets on the public record for sure, not just in our minutes.

MS. BROCK: Okay. And I just -- this was wonderful today, but there was so much background noise. And somebody -- it was so rude. You could hear --

DR. ZIEMER: It was difficult for us.

MS. BROCK: It was awful (inaudible).

MR. GRIFFON: Paul --

DR. ZIEMER: Again, thank you, everyone.

MR. GRIFFON: Paul, one more question. Mark Griffon.

DR. ZIEMER: Yeah, Mark.

MR. GRIFFON: The transcripts from our last Cincinnati meeting, would they be available prior to our next conference call? Is that possible?

MR. ELLIOTT: This is Larry --

MR. GRIFFON: Because there were good explanations by Ted Katz and Jim Neton, and I just wanted to review those.

DR. ZIEMER: Yeah, I don't think I've seen them.

Larry, do you know where --

MR. ELLIOTT: Yes, I can answer that question. The transcripts from the March 7th meeting will be on the Web site next week, I believe.

MR. GRIFFON: Next week? So we'll have them before our next conference call, definitely?

MR. ELLIOTT: They'll be there before the next conference call.

MR. GRIFFON: Okay, thank you.

DR. ZIEMER: Okay, thank you, everyone. We're adjourned.

[Whereupon, the meeting was adjourned at approximately 5:05 p.m.]

C E R T I F I C A T E

STATE OF GEORGIA)
)
COUNTY OF DEKALB)

I, KIM S. NEWSOM, being a Certified Court Reporter in and for the State of Georgia, do hereby certify that the foregoing transcript, consisting of 139 pages, was reduced to typewriting by me personally or under my direct supervision, and is a true, complete, and correct transcript of the aforesaid proceedings reported by me.

I further certify that I am not related to, employed by, counsel to, or attorney for any parties, attorneys, or counsel involved herein; nor am I financially interested in this matter.

This transcript is not deemed to be certified unless this certificate page is dated and signed by me.

WITNESS MY HAND AND OFFICIAL SEAL this 22nd day of April, 2003.

KIM S. NEWSOM, CCR-CVR
CCR No. B-1642

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